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REAUTHORIZATION AND OVERSIGHT OF THE FCC

HEARING

BEFORE THE

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OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

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FIRST SESSION

ON

REAUTHORIZATION AND OVERSIGHT OF THE FEDERAL
COMMUNICATIONS COMMISSION

MARCH 20, 1985

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REAUTHORIZATION AND OVERSIGHT OF THE FCC

WEDNESDAY, MARCH 20, 1985

U.S. Senate,
Subcommittee on Communications,
Committee on Commerce, Science, and Transportation,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SR-253, Russell Senate Office Building, Hon. Barry Goldwater (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Dale Brown and Dan Phythyon, staff counsels and Tom Cohen, minority staff counsel.

OPENING STATEMENT BY SENATOR GOLDWATER

Senator Goldwater. The committee will come to order. I think I should explain that when I am conducting meetings, I start on time. We do not need a quorum present to start a meeting. We need a quorum only to pass legislation, so we can begin hearings without any of our members present.

I am pleased to welcome you here today to the Communications Subcommittee's hearings on the authorization of the Federal Communications Commission. It is also my pleasure to be able to extend a very warm welcome to Mark Fowler, Chairman of the Federal Communications Commission, who is here today in order to provide us with his testimony on the authorization effort.

Now, the purpose of today's hearings will not only be to discuss the authorization level for fiscal years 1986 and 1987, but to also provide some background on several other proposals that are of particular interest to Chairman Fowler and the Federal Communications Commission.

Those areas include the travel reimbursement program and whether this program should be extended, whether the date of the annual management report submission should be changed and extended to March 31 of each year, and finally, the desire of the Federal Communications Commission to establish a schedule of fees for Commission services.

This fee schedule is not entirely a new idea. It is very similar to the one the Senate passed last Congress in S. 55. I encourage all parties who may have an interest in this schedule to submit written statements for us to consider, and in that respect, we will hold the hearing record open through the end of this month. This also applies to comments people may have on any aspect of FCC activities.

This hearing also provides members of the committee the opportunity to ask Chairman Fowler about issues and rulemakings before the FCC now and any that might come up in the near future.

The Federal Communications Commission has, under the able direction of Chairman Fowler, done a remarkable job in implementing the objectives of this subcommittee and the Congress, and it is my fervent hope that the spirit of cooperation will continue.

Once again, I want to thank Chairman Fowler for being with us today. I might add that because of the rather unusual experiences that this Congress will have to go through this year relative to attempts to get the deficit in control and get the budget in control, there probably will not be as many hearings as many people would desire.

I might make that a little more clear by stating that when I came to the Senate, I had a very firm belief that it was not the bills that we passed that made a Senator good, it was the bills we did not pass. And I still have that opinion.

So, Senator Danforth, the Chairman, would you care to say anything?

The **CHAIRMAN**. Mr. Chairman, thank you very much. I do not have any statement.

Senator **GOLDWATER**. Thank you.

Senator Hollings, do you have an opening statement?

OPENING STATEMENT BY SENATOR HOLLINGS

Senator **HOLLINGS**. This being the first hearing of the Communications Subcommittee this Congress, I would first like to say how much I welcome the opportunity to again work on communications policy with my good friend from Arizona, Senator Goldwater. We have been doing this for some 10 years now, and I have always found his expertise and judgment in the field of communications extremely helpful. (I am, of course, sure he feels the same way about me.) While we may have had some disagreements on how to proceed in this area, we have almost always succeeded in achieving a consensus. I look forward to working in this same fashion during the 99th Congress.

I have often said that there is no education in the second kick of a mule. During the last Congress, the Chairman of the FCC proved that old adage correct. He, however, appears to be showing that three kicks might do the trick.

In the past 2 years, Congress became very adept at overturing decisions of the Commission. The access charge order, the repeal of the financial interest/syndication rules, and the increase in the national ownership of broadcast stations all came before Congress and all were changed. They were, with certain exceptions, based more on faith than fact.

I understand that the Chairman of the FCC claims to have learned, and recent decisions are certainly headed in a better decision. However, I remain wary. Communications is too important, and the Commission's agenda is too crowded for us to let down our guard.

I am particularly concerned about the various proceedings concerning the fairness doctrine, including the proposals to repeal or alter the personal attack and political editorializing rules. Since the beginning of Chairman Fowler's tenure, I have put him on notice not to weaken in any way the various political broadcasting laws or rules. So that there is no misunderstanding, the Chairman should consider such notice to be again issued.

I am also concerned about what is fast becoming de facto deregulation of dominant telephone companies. I well understand the dynamic of the telephone industry and the need to change out of date policies. But market power is still held by AT&T and its divested siblings. If the FCC does not ensure that competition is both full and fair, it will surely harm the competition we have tried so hard to foster and cause telephone rates to rise. I will be looking very closely at your upcoming decisions concerning Computer II and AT&T deregulation.

I am also going to follow closely your public television "swap" proposal. I understand the superficial attraction of this proposal. It follows somewhat on Mr. Fowler's law review article about using a spectrum fee to aid public broadcasting. What we have here is a sort of "minispectrum fee," and it raises some familiar problems and then adds a few.

Public broadcasting is first and foremost about service to the public. That is why we spend about $200 million annually to fund programming not otherwise available. That is also why we spend millions of dollars a year to extend the reach of public broadcasting. It would be truly ironic—and would confirm the public's worst thoughts about the Federal Government—if we had one part of the Federal Government spending money to extend service and another part, in effect, giving money for a reduction in service.

These swaps are also limited to a select group of public television stations. These stations would benefit greatly, and I am extremely concerned that this fact would be used as an excuse to eliminate Federal funding for public broadcasting as a whole, causing the other stations to languish and fail. Public broadcasting is not a series of individual stations but a cohesive whole. We all should be very careful about creating strains that would tear it apart. In fact, it strikes me as peculiar that a commission that has justified past policies because they may help create new broadcast networks may be sowing the seeds that might cause the demise of our only public television network.

I am, of course, concerned about other proceedings at the FCC. I will pursue those further with some questions at this hearing and directly with the Commission later. I will finally say that while the FCC and I have differed on policy matters, I have always found them responsive and courteous and commend them for that.

Senator GOLDWATER. Thank you, Senator Hollings.

I would like to welcome a new member of our subcommittee from Tennessee, Mr. Gore, who comes to us with a great deal of experience on the House subcommittee.

We really welcome you here, not just because you are a Democrat or because you are from Tennessee, but because you have a lot of knowledge in this field.

OPENING STATEMENT BY SENATOR GORE

Senator **Gore**. Thank you for your kind and generous remarks, Mr. Chairman. I have enjoyed working with you personally in the past on satellite legislation and other matters, and I am pleased to be a member of the subcommittee and look forward to working with you.

Mr. Chairman, I am especially pleased to participate in this first hearing of the subcommittee in this session. I have had a continuing interest in these issues, and I look forward to exploring with Chairman Fowler the current state of our telecommunications system and the government's role as protector of the public interest in the massive changes we are now experiencing—in domestic telephone service, broadcasting, international telecommunications, satellite services, and the extraordinary range of new technologies coming on the shelf almost daily.

There is some credence in the idea that telecommunications technology has our ability to adapt old policies to meet the dynamic pace of the changes before us. I am as excited as everyone else about new communications services and new devices that are making the workplace more productive, making our leisure more enjoyable. "Communications"—as it is coming to be known—is changing our lives and we are probably better off for it.

But there is a dark cloud behind this silver lining. As we rush headlong in accelerating the breakup of our national telecommunications system into hundreds, thousands of competitive businesses each seeking a share of the market, we have created some real problems.

I would argue that not everyone has benefited from the new competition that has been trumpeted into being over the past few years. People who simply need old telephone service to get by—people who live on farms and in rural communities, the elderly, small business operators, and others—are in danger of being left at the station as this giant locomotive we call competition rolls into the 21st centery.

I would not suggest that we necessarily slow things down. In fact, I would suggest that we accelerate the pace at which these new telecommunications are being made available to everyone. The problem is that we are creating a geographical class system for access to these marvelous telecommunications service which are becoming the most vital part of our national economic infrastructure.

This is not simply a matter of making sure that Mr. and Mrs. Jones, living on a farm in west Tennessee, are wired for a telephone. Our commitment to universal telephone service, is, hopefully, still intact. The issue is whether the Jones will be able to access a national computerized liverstock marketing system to remain competitive in the farming operation. The issue is whether the Jones' children will attend classes linked by a fiber optic network, for library research services. The issue is whether the Jones's community will be able to attract new businesses demanding the full range of telecommunications services for the smart buildings becoming standard in our urban areas.

And, of course, the issue is: how much will it all cost?

In answering this question, we are now being asked to set aside equity as a value we have held for a half century. As a goal, competition is commendable. But as the absolute answer to the needs of a diverse nation of individuals and busineses, it sometimes rings hollow. We are being asked to accept cost-based pricing as not simply a goal, but a kind of economic religion. And, the fact is, the new religion has some real winners and some real losers.

After I was appointed to the Commerce Committee and this subcommittee, I was told that it would be a quiet year in the communications arena. After all, they said, we've divested AT&T, we've deregulated cable television, we're letting the marketplace work.

Mr. Chairman, I'm looking forward to working with you, Senator Hollings, and other members of the subcommittee, to take a new look at the postdivestiture landscape, as competition begins to produce benefits, and as it begins to take its toll.

Thank you.

Senator GOLDWATER. Thank you Senator Gore.

Senator Pressler has an opening statement for the record, which I will insert at this point.

[The statement follows:]

OPENING STATEMENT BY SENATOR PRESSLER

First of all, I want to thank the Chairman for calling these hearings early in the 99th Congress. I am pleased that this Subcommittee is exercising its responsibility to hold oversight hearings on Commission activities.

Communications seems to be a quiet area these days, and yet much debate continues on the rulemaking currently in progress on alternative international Satellite systems, the impact of the divestiture on domestic telephone rates and service, the mergers or takeovers of our television networks, and the continuing questions about the Fairness Doctrine and the First Amendment rights of broadcasters. It may be quiet legislatively, but there is much need for a watchful Subcommittee. Our oversight responsibilities seem even more clear this year. I am pleased that we will address some of these issues today.

Chairman Fowler, I want to commend you and the entire Commission for your decision in Docket 80-90 granting daytime-only radio stations a preference in applications for new FM broadcast assignments. The time for such action had certainly arrived. My bill in the 98th Congress, S. 880, would have provided for such a preference. I am most pleased to see this problem resolved administratively and am sure the daytimers who will obtain FM licenses through this action will bring the exertise and experience necessary to ensure the best possible operation and community service.

The compromise achieved on access charges and the universal service fund will, it appears, keep rural telephone rates down. I have had some constituent letters complaining about the impact of divestiture, as I am sure may of my colleagues on this subcommittee have. However, the overwhelming majority of the people feel we should let the dust settle now. I have no quarrel with that, but I feel we have to deal responsibly with each problem that arises and do so in the fairest way possible.

One group facing problems in the aftermath of divestiture is the handicapped. Prior to the AT&T divestiture, they could get the special types of telephone equipment they needed from their local telephone companies. Currently, teletypewriters for the deaf, the artificial larynx, amplified headsets, and other special equipment can now only be obtained from one national center in Hew Jersey. The handicapped cannot turn to their local phone companies in most states. I believe the success or failure of this current system merits evaluation. That was one of my reasons for introducing S. 402, legislation amending the current Telecommunications for the Disabled Act. We have a telecommunications system second to none in the world. We must do all we can to ensure the handicapped and hearing-impaired equal access to that system.

I thank you, Mr. Chairman, for calling this hearing, and I look forward to the upcoming discussion.

Senator GOLDWATER. Mark, the floor is yours.

STATEMENT OF HON MARK S. FOWLER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION, ACCOMPANIED BY ED MINKEL, MANAGING DIRECTOR; BERT HALPRIN, CHIEF OF THE COMMON CARRIER BUREAU; JIM MC KINNEY, CHIEF OF THE MASS MEDIA BUREAU; BOB FOOSANER, CHIEF OF THE PRIVATE RADIO BUREAU; JACK SMITH, GENERAL COUNSEL; RICHARD SMITH, CHIEF OF THE FIELD OPERATIONS BUREAU; BOB POWERS, CHIEF SCIENTIST; PETER PITSCH, CHIEF OF THE OFFICE OF PLANS AND POLICY; AND BILL RUSSELL, CHIEF OF THE OFFICE OF CONGRESSIONAL AND PUBLIC AFFAIRS

Mr. Fowler. Thank you, Chairman Goldwater and Chairman Danforth. I appreciate this opportunity to report to you on the activities of the Federal Communications Commission, and on how we anticipate implementing our policies within our proposed authorization levels.

With me today are senior staff members including Ed Minkel, our managing director; Bert Halprin, who is chief of the Common Carrier Bureau; Jim McKinney, on my immediate right, chief of the Mass Media Bureau; Bob Foosaner, chief of the Private Radio Bureau; Jack Smith, our general counsel; Richard Smith, chief of the Field Operations Bureau; Bob Powers, our chief scientist; Peter Pitsch, chief of the Office of Plans and Policy; and Bill Russell, chief of the Office of Congressional and Public Affairs.

Since I became Chairman in 1981, we have attempted to promote to the maximum extent possible an unregulated competitive telecommunications marketplace. Now, why have we pursued this objective? Because we believe fervently that the proper role of government is to minimize its intrusiveness, and because the quality and quantity of goods and services for the common man improve when private enterprise is permitted to flourish, when in a $3 trillion economy entrepreneurs are set loose.

Alfred Kahn recently observed, and I quote, "It was never the purpose of deregulation to preserve the cozy life for the deregulated companies, or for the lawyers who were the main agents through whom they practiced their entrepreneurship. The purpose was to give the public the benefits of competition, and that it has most certainly done."

When we began our efforts to restructure and deregulate common carrier markets, some feared we would jeopardize the communications infrastructure, cross our wires, and scare away investment in this field that is so crucial to America's growth.

Well, the reverse has happened. We carefully cut back on what was previously thought to be an essential ingredient in the process, heavy government regulation, and found that the system not only still works, it works better.

The dieter who cuts down on salt soon finds that that essential ingredient can be reduced, and things actually work better. And so it is with the regulator, the regulated, and regulation. Less leads to more.

We believe that free markets are the most efficient way to bring telecommunications services to the common man. Thus we have removed entry barriers and deregulated customer premises' equipment. We have provided for interconnection of carriers and private communications systems and streamlined rate and service regulation of most carriers.

Consumers are the primary beneficiaries of our actions. In the telephone industry, we believe our efforts are already bringing tangible results. As part of our access charge proceeding, the Commission in May 1984 implemented a system of charges not to exceed $6 per month per line for multiline business users.

At the same time, and as a direct result, we ordered a 6.1 percent across the board reduction in AT&T's long distance rates for all consumers.

In December 1984, the Commission adopted the recommendation of the Federal-State Joint Board to establish a subscriber line charge of $1 a month for residential and single line business users starting June 1, 1985. This charge will be allowed to rise to a maximum of $2 per month. We anticipate further long distance rate reductions will result in each of these two steps, and anticipate that competition in the industry will intensify. Indeed, some experts posit that we will soon see price wars among the long distance carriers.

In addition, a stronger public network and in the long run cheaper local service will result from that decision. By reducing existing surcharges in the long distance rate structure we can discourage large users from opting for alternative systems that bypass the public network.

If large users leave the public network, small users will be burdened with the costs left behind, thereby dramatically raising their rates and threatening universal phone service.

A joint board proceeding in the late 1986 area will assess the effectiveness of subscriber line charges to see what, if any, additional steps should be taken by the FCC. Furthermore, we will continue to examine the impact our decisions have on low-income users and lifeline rates on universal service and on small telephone companies and take appropriate remedial action.

We believe that our efforts combined with those of the States through the Joint Board have resulted in a sound, workable system. The basic outline of the access charge decision, including subscriber line charges, was upheld by the D.C. Circuit Court of Appeals in June 1984, and the Supreme Court has denied certiorari.

We have also seen the marketplace work well in the provision of terminal equipment. It used to be said that you could get any phone you wanted as long as it was black. With deregulation, consumers now have a wide variety of options of a sophistication and variety hardly imaginable just a few years ago.

Beyond that, local exchange carriers are developing techniques for transmitting data over ordinary subscriber lines and are introducing fiber optic transmission media and digital switches into their network.

In order to bring the benefits of this technology to the consuming public, the Commission on March 1, 1985, conditionally granted petitions filed by seven Bell operating companies for waiver of the structural separation requirements of the *Computer II* decision to perform protocol conversion.

Now, this decision allows them to make a system for transmitting data compatible with a newer one that transfers information in electronic bursts. It is the first major step in facilitating electronic communication, and it will result in less costly and more efficient services for consumers when they use personal computers at home to communicate, for example, with large data banks.

Internationally, we have pursued a strategy that favors competition on the U.S. end. We have eliminated the voice record service distinctions that kept AT&T and the international record carriers, IRC's, out of some international markets.

Gone, too, is the cookie cutter that limited IRC domestic operations on the one hand and barred international offerings by Western Union on the other. In our continuing struggle to fashion regulatory policies that keep pace with state of the art technologies, we are presently reevaluating our cable and satellite loading policy.

In addition, pending before the Commission are applications to permit private systems to provide international transmission capacity by fiber optic cables and by satellite.

We have issued a notice of inquiry and proposed rulemaking on the establishment of the alternative satellite systems. Comments are due on April 1, 1985, reply comments on June 5, 1985.

Since these matters await further Commission action, I will not delve into the merits, but let me note that they demonstrate how marketplace forces pursue diverse communications outlets.

Any private system must be consistent with U.S. obligations to other nations, but I believe we must move away from restrictive policies toward those that contribute flexibility and choice to the marketplace.

Deregulation at home does not mean, however, that we will give up that minimal control needed to protect the United States against whipsawing or other monopoly abuses by foreign authorities.

EXPEDITING SERVICES

Another major goal we share with this Committee is expediting the delivery of communications services to the public, that is, making sure the Government operates efficiently. We hope to continue this trend in fiscal years 1986 and 1987.

Technology-driven changes in the industry are so extensive and occur so rapidly that entry, facility, service, and rate regulation often only impede delivery of new services to the public.

We recognize that the Commission cannot shape policies to address the communications needs of all users, but we can by emphasizing the marketplace promote an environment that efficiently couples customer demand with the ingenuity of service providers.

Given the pace of technological development, we as policy makers can at best hope only to harness its power to serve consumers. The Commission can help by accelerating the process for authorizing new and existing services. In other words, by getting government out of the way. Let me review our progress and service authorizations in several areas.

LOW POWER TELEVISION

In our low power TV program we have already authorized over 675 low power TV stations and close to 6,000 TV translator stations. In March 1984, in response to a cutoff list for existing applications, we received approximately 25,000 new applications.

We have completed our preliminary processing of these applications, and now expect to begin disposing of them through the lottery process. We hope to substantially decrease our pending backlog and increase the number of grants for both LPTV and television translators by the end of fiscal year 1985.

We expect that during fiscal year 1986 we will open a national filing window for the remaining low power allotments. A smaller limited window for the State of Alaska will probably open early this summer.

MMDS

This is a new way—some people call it wireless cable—to provide multichannel pay services very efficiently and quickly using broadcast techniques.

We authorized the use of lotteries to award more channel multipoint distribution service licenses from among 16,500 pending applications which will make wireless cable services possible in almost all TV markets. Our order also allows ITFS licensees to lease excess capacity on their channels for this purpose.

Similarly, we have eliminated restrictions on the use of FM subcarriers and expect that utilizing these frequencies to satisfy the demand for paging services and other uses will reduce costs and enhance efficient use of the spectrum.

CELLULAR

Cellular radio, telephones in cars. We continue to make substantial progress in our program to authorize cellular radio. In the first 90 markets, we have authorized systems to be operated by wire line carriers in all markets. In 68 of these, we have also authorized the nonwire line carriers to operate systems.

In June 1984, we received 5,182 applications for markets 91 to 120, nearly 10 times as many as the prior round. The staff is screening these applications closely before they are accepted for filing. A substantial number of these applications appear to be lottery tickets, and the Commission is taking steps to weed out those applications. We have not yet announced a filing date for further markets.

RADIO

We have allocated 689 new FM radio frequencies across the United States, and will soon begin accepting applications for these stations. Efforts are also under way to improve service in the AM band.

With the assistance of Senator Pressler and other members of this committee, we have expanded the hours of operation for daytime broadcasters. They can now begin as early as 6 a.m. in the winter and can operate until 2 hours after local sunset.

Steps are currently being taken to create as many as 500 new AM stations on the Mexican, Bahamian, and Canadian clear channels, and we are studying proposals to add frequencies to both ends of the AM band.

Finally, as of December 15, 1984, nearly all class 4 AM stations were allowed to quadruple their nighttime power.

As far as license processing is concerned, I am pleased to report that the number of pending applications for new AM stations and major changes to existing AM facilities has reached its lowest point in 10 years. There are currently 285 such applications pending. That is a 42-percent reduction from 1 year ago.

Likewise, there are currently 852 applications pending for new FM stations and major changes to existing facilities. That is 35 percent fewer than 1 year ago. This is due to the leadership of Jim McKinney of our Mass Media Bureau.

We do expect a temporary increase in the backlog when applications for the newly allocated FM frequencies begin to come in. Assignment and transfer applications in the AM and FM services are being handled rapidly, the majority within 60 days of receipt. Progress on television applications is less dramatic, but the backlog is down there as well.

PRIVATE RADIO

We have made great strides in speeding authorization of private radio services. Since completing consolidation of our Private Radio Bureau's licensing activities in Gettysburg, PA, we have reduced the Bureau's licensing time from 60 to 100 days for land mobile and microwave services, which is essentially what it was when we came into office, to 25 to 30 days for land mobile and 60 to 65 days for microwave. Again, that is due to the efforts of Jim McKinney and Bob Foosaner.

REDUCING PAPERWORK

Apart from removing legal impediments to the efficient functioning of the marketplace, we have also eliminated several reports from our licensees. These filings had imposed significant paperwork burdens.

We have reduced agency paper work burdens by over 70 percent, from 49.8 million to 14.7 million burden hours, including a reduction of 3.8 million burden hours in the first quarter of fiscal year 1985 alone.

The time and resources formerly utilized in these endeavors can now be more efficiently redeployed by the regulated and the regulator.

We believe that our authorization request, $96.5 million, properly maintains resources for those areas where regulation is essential or where we are developing new services for consumers while providing sufficient flexibility to accommodate unexpected miner program increases.

Among the new responsibilities placed on the Commission is implementation of the Cable Communications Policy Act of 1984. Most of our effort will be focused on its rate regulation and equal employment opportunity provisions. Rulemaking proceedings are under way on both matters, and they will require continuing Commission supervision.

One important fiscal year 1986 initiative provides for enhancing our primary computer, which handles the bulk of our Washington, DC, license processing. It has become completely saturated. By moving to more efficient hardware and software, we hope to improve our productivity in a time of declining personnel resources.

To help stretch our resources, we have also requested an extension of the travel reimbursement program which allows the Commission to accept reimbursement from sponsors of conferences and meetings for necessary expenses incurred by Commission officials attending them.

Finally, I would like to discuss our proposal to implement an administrative fee program. As you may know, the Commission's original fee schedules implemented under the authority of the Independent Offices Appropriation Act of 1952 were overturned by the courts in the mid-1970's. The Commission has essentially completed a program to refund the overcollection.

In recent years, we have supported efforts by this committee to enact a fee schedule with the fee amounts fixed by statute. This year, at the request of OMB, we proposed our own legislation to establish such a schedule. We believe that this proposal recovers our cost in an equitable, fair, and realistic manner.

Such fees can provide additional funds to the Government for specific services rendered without the legal uncertainty which could occur if the Commission once again attempted to establish a fee schedule under the 1952 authority.

If our proposed schedule were enacted, we expect that in its first full year of operation, we could collect about $46 million, or 50 percent of our fiscal year 1986 budget request. This estimate of receipts would vary, however, depending on the actual number of applications we receive for our various licenses.

Our fiscal year 1986–87 authorization request does not include funding to develop and implement a fee collection program. To do so, we estimate that if a fee schedule were operational by July 1, 1986, we would require $1.6 million in fiscal year 1986 and a total of $1.1 million in fiscal year 1987.

With these levels, we believe that we could implement an effective fee collection program consistent with the applicable GAO and Treasury regulations.

This completes my prepared statement, and I would be pleased to entertain the subcommittee's questions.

Senator GOLDWATER. Thank you very much, Mr. Fowler.

To begin the questioning, I will ask our Chairman if he has anything.

The CHAIRMAN. Thank you, Mr. Chairman.

Mr. Fowler, as you know, the administration has been engaged in negotiations with the Japanese with respect to telecommunications trade. You made a statement, I think, some months ago as to the role of the FCC as you saw it with respect to telecommunications trade.

Could you tell the subcommittee what your views are?

Mr. FOWLER. Yes, Senator; I think first of all I ought to state that everyone in this country and certainly in this town recognizes you have been a leader in forcing certain concerns about perceived unfairnesses on the part of, for example, the Japanese permitting access to their markets by American companies.

That was the catalyst for my authorizing and ordering the staff at the Commission to look at part 68 of our rules to see whether or not that registration program where we register all equipment in order to ensure that there is no harm to our national network could not be used to further the goals and concerns which you have expressed and others have expressed.

It is only a study at this point. There are no action steps that are being contemplated now. As you know, Mr. Chairman, we are working very closely with your staff. We do not view ourselves as the trade experts. It would simply be a ministerial mechanism that could be employed upon proper certification by, I would think, the executive branch.

The other point is, I wanted to indicate that we would in no event take any actions without first continuing our very close consultation with you and other key Members of the Congress and the executive branch.

The **Chairman**. I think this is a very timely subject, because we should find out within the next 11 days how successful we are with respect to working something out with the Japanese. We have tried to establish a general principle of reciprocity in international trade.

My suspicion is that one way or another the Japanese will find a way to shut out American products from their own telecommunications market. I would encourage you to consider that Mr. Fowler in your analysis of what our actions should be.

My guess is that with great fanfare they will unveil an arrangement which at least on its face appears to be satisfactory, but which in practice turns out to be something less than what it was represented to be.

So, regardless of whatever is announced on or about April 1, I would encourage the FCC to stick with the subject and to continue to address it, and to discuss your thoughts with Ambassador Brock and other people in the administration.

Mr. **Fowler**. We will do that, Mr. Chairman.

The **Chairman**. Thank you, Mr. Chairman.

Mr. **Fowler**. Thank you, sir.

Senator **Goldwater**. Senator Ford.

Senator **Ford**. Thank you, Mr. Chairman.

Mr. Fowler, I have several questions. Would it be all right just to submit them to him for an answer later?

Mr. **Fowler**. Yes, sir, indeed.

Senator **Ford**. If you could do that in a timely manner, I will not take up much time of the committee this morning. I have a couple of questions I would like to ask: Mainly about channel swapping, VHF and UHF. I would like to ask you a question or two about that if I can.

I understand that the FCC has recently started a rulemaking proceeding that proposes a fundamental alteration of the manner in which television channels are allocated in the country under the Communications Act. Is that true?

Mr. **Fowler**. You are referring to the proceeding involving public broadcast stations?

Senator **Ford**. That is correct.

Mr. **Fowler**. Yes, sir; I am not sure that you could properly characterize it as a fundamental alteration.

Senator **Ford** Well, you characterize it the way you want to. I will characterize it the way I want to.

Mr. **Fowler**. That is fair enough, but I guess I could explain later that it simply is an option for public broadcasters. It does not mandate a wholesale revision of how television stations operate and which bands they operate on.

Senator **Ford**. Well, what you are doing here and what I am referring to is the concept of swapping noncommercial VHF stations for commercial UHF channels, an idea that has emerged recently regarding a signed agreement between a commercial VHF station and noncommercial VHF station in Tampa, FL.

I think we all agree that VHF is the superior service, even though we have tried to bring UHF into parity with VHF. It seems to me that swaps would undermine if not destroy the 30-year policy of promoting the development of public television by reserving television channels, particularly the VHF channels.

This policy was made in the public interest, as I understand it, reading the history by the FCC, in the early fifties, and with the full support of Congress, I might add. Isn't this still a wise policy?

Mr. **Fowler**. Senator, I want to assure you that the goals and the underpinnings of what Congress did in the fifties and the Commission did has in no way been changed by this proceeding. This proceeding basically is the result of some public broadcasters who came to us and said, look, we have a VHF station in our market.

We are able to work an agreement up where we can receive $25, $30, $50 million from a broadcaster to switch and operate on the UHF station that the commercial broadcaster has and let him operate on the VHF station.

Our backs are against the wall financially. We are having difficulty getting funding. We are always in a bad state of affairs. Give us the option, the option of being able to work these kinds of arrangements.

In this case, the Tampa general manager who came to my office made a fairly good case, I thought, by pointing out that the UHF station he would be moving to would have as good or better coverage than does the VHF. He feels also that the differences between UHF and VHF which used to be quite great are very quickly now eroding and changing and diminishing.

And he said to me, I think I will be able to provide a far greater service to Tampa and the whole area which we serve here if I have the money to be able to hire good people and present good programming, and some of that good programming I could offer up to the PBS national network so we would have more stations contributing good programming to the PBS network.

He said, give me the option, Chairman. So we started a rulemaking proceeding, Senator Ford, to look at some of the questions you have raised inferentially. We want to make sure, for example, that people will still be able to get PBS service if there were to be such a swap, that it would only be something that would occur in a specific rulemaking.

That is, each swap would require a specific rulemaking at the Commission where parties would comment and the Commission could look at the arrangement before approving it to make sure that the public interest is not disserved, and that we would simply be giving an option to public broadcasters who want to take advantage of that in order to be able to finance in a better manner for a long term the operations of the station. It would not force them to make such agreements. It would simply give them the option.

Senator **Ford**. Well, if they got offered enough money, I imagine you could get anyone's attention, could you not?

Mr. **Fowler**. It just depends. For example, one in Chicago indicated to me he has been offered a very huge sum, and the board of directors had turned it down. So it depends on the markets.

Senator **Ford**. They could try another figure and let the board meet again. That is kind of the way I see this. Is this a departure from your normal well-established procedures for such situations? It seems to me, as I understand, that the Commissioners, yourself included, acknowledge that the proposal also raises significant legal problems.

Mr. **Fowler**. There is a very serious legal question which we want to have comments on. It does not mean that it is not surmountable, but you are absolutely right, Senator. I want to assure you, though, that because each agreement would have to be looked at carefully by the Commission to make sure that the public interest is served and because it is simply an option and is not mandated, it seems to me that we can assure that the public interest is being served.

The final point is, there are many public broadcast station managers who will tell you that they want this option because their backs are against the wall.

Senator **Ford**. Well, one quick question, Mr. Chairman. Can you comment on all of the furor that is going on about takeovers? They even had one in the paper this morning indicating, as I read, they wanted to take it over and liquidate it. You have the ABC purchase that will be before you.

Maybe you cannot comment on that because it is pending in front of you, but others are not. So would you just kind of bring me up to date on your feeling as it relates to all of the purchases, all of the takeovers? There are several going on out there, as you know.

Mr. **Fowler**. Yes, sir; we certainly are aware of the one that you mentioned. Our basic philosophy, sir, is that we have a responsibility under section 310(b) of the act to approve all changes in ownership, transfers of control, either legal or de facto, and we have a process which is established, and it is open to any party proposing a change.

In the case of ABC, Cap Cities, there is an acquisition of control by Cap Cities proposed. We do not know all the details on it yet. Any such application that is filed would be subject to a process where parties can file petitions proposing to deny grant of the application. There is a rather rigorous procedure that is involved to assure that the public interest is being served.

Our other view is that we ought not to artifically erect regulatory hoops one way or the other. That is, we should neither encourage nor discourage any party, but we ought to try to be the impartial umpire who is making judgments in the best way we can to determine what serves the public interest, that is, where are the interests of the American people in these proposals?

So, that is our basic philosophy. It is hard to see right now how many might be presented to us. We could only speculate. But we will try to be impartial and perform our statutory duties.

Senator **Ford**. Do you set the rates for the telephone companies, or approve the rates?

Mr. **Fowler**. For interstate rates. Yes, sir.

Senator **Ford**. Do you approve below cost rates?

Mr. **Fowler**. As a general proposition, no.

Senator **Ford**. Have you approved any lately below cost?

Mr. **Fowler**. In my view, no, sir; I think you are referring to the flexible pricing proposals.

Senator **Ford**. I am not referring to anything. I just asked you a question. As far as you are concerned, you have no knowledge of the approval of any rates that are below cost to the company that is proposing the rates?

Mr. **Fowler**. We have approved no plans where we are not convinced that the carrier will recover its costs.

Senator **Ford**. Well, I may call something to your attention later on, or I would not have asked the question.

Thank you, Mr. Chairman.

Mr. **Fowler**. I would be delighted to hear about it, sir.

Senator **Goldwater**. Senator Gore.

Senator **Gore**. Chairman Fowler, you and I have had some discussions in the past about access charges, and you are now about to impose another kind of plan that is supposed to take effect soon.

You say in your statement in reference to the residential and single line business user access charge that that is intended to be $1 per month starting on June 1, and then you say, "This charge will be allowed to rise to a maximum of $2 per month."

Now, what is in your plan which ensures that that particular access charge will not go up in future years to $3 a month, $4, $5, $6, or on up?

Mr. **Fowler**. The basic answer to that is that as a result of our order, we specifically say that the $2 charge which would be implemented, Senator, on June 1, 1986, would be frozen, and there would be no further actions taken to either change it up or down until the Joint Board and the Commission would have a chance to see what the effects had been of subscriber line charges.

Senator **Gore**. All right. Now, what that means is that it would be $1 a month June 1 of this year, then a second dollar a month June 1 of next year, and then additional dollars per month after that if and only if you take a look at it first.

Mr. **Fowler**. I do not think you can say that. What we said was that we would, A, freeze the $2, and then we would look to see what the effects were, and whether or not any further action would be contemplated.

It is also fair to say, Senator, that you cannot say that some subsequent Commission might not include in conjunction with the

Joint Board, which is made up, as you know, of FCC and State regulatory commissioners, that further increases were warranted.

But clearly it is our intent. There is no secret plan there is not a view that we really have to move this even higher. We do not know, and we do not want to raise it any higher than is necessary in order to achieve the purposes that we have enunciated.

Most importantly, we are always dedicated to preserving universal service. We said that at the beginning of the access charge proceeding. We just reiterated it in our latest order. And that is the very reason that the Joint Board and the Commission would then again be looking at the effects of the $1 and $2 charges beginning in late 1986 to make sure that universal service is in no way threatened.

Senator Gore. Well, now, let me just pursue this briefly, because you say that it will be frozen at $2 per month, but what I am looking at is the procedure for unfreezing, and as I understand your plan, it can be unfrozen unilaterally by the Commission simply by the Commission satisfying the requirement that you look at.

I am not saying you have any secret plan to do this, please do not misunderstand, but technically, according to the legal requirements of this plan that you are putting forward, all that would be required is, you could freeze it on June 1, 1986, and then on June 2, 1986, you could say, well, we have taken a look at this, and we do not think it is a burden, and we think that it ought to go to $3 a month, right?

Mr. Fowler. You could, but that is not our intention. Technically you are right. Absolutely.

Senator Gore. OK. Well, I just do not want anyone to put too much weight on this statement, "This charge will be allowed to rise to a maximum of $2 per month." That is solely within the discretion of the Commission.

Mr. Fowler. But in order to change that, we would have to have a further rulemaking, and there would be public comment, and the Congress would be involved. So I think it is significant, Senator, to say, yes, it is going to $2, but it will be frozen, and it will be frozen through obviously all of 1986 because in late 1986 we will institute a study to see what the effects have been, and if there are any bad effects, we can react accordingly.

Senator Gore. All right. That is fair enough. You would have to follow your own procedures in unfreezing it, and that would require that you would allow public comment, and presumably the Congress could get involved during that period of time.

I appreciate that response. As you know, I have concerns about the whole argument behind the access charge. I believe that it is a mistaken idea, but you have done a great deal of work since the first plan was presented, and you have taken care to bring into account a lot of the concerns which were not really looked at the first time around, and you have gotten some support from groups and interests that were opposed to you the first time around, and I am impressed by that fact.

I still believe that the philosophical base of the plan is wrong. But this is something that we can talk about another day. Your concern is bypass. Really, the bottom line justification for what you are doing is to prevent bypass. Is that fair to say?

Mr. **Fowler**. Yes; that is one of the primary concerns.

Senator Gore. The primary concern?

Mr. **Fowler**. The primary concern. Well, that and preserving universal service, and I suppose they go hand in hand.

Senator Gore. I hope so.

Now, where bypass is concerned, it is also safe to say that you are primarily concerned about long-distance bypass, correct.

Mr. **Fowler**. We are really concerned about bypass of the local exchange. That is the primary concern we have, Senator.

Senator Gore. By long distance, by persons providing long-distance service?

Mr. **Fowler**. Or persons taking long distance service.

Senator Gore. Now, to what extent has the Commission considered the increase in local bypass which will be occasioned by increases in local charges?

Mr. **Fowler**. Let me ask Bert Halprin to field that. Bert?

Mr. **Halprin**. Yes, we are very concerned about that, and are monitoring that as well. Bypass is harder on a local basis. Generally local users want to use the ubiquitous universal nature of the telephone company to reach other people. One of the factors of long-distance bypass is that it only requires a single connection from a large user to a long-distance provider through a satellite dish to hook into that long-distance network, but we are concerned about it.

Senator Gore. Well, my concern is that our Nation's view of the bypass problem has been shaped by the view presented by the old AT&T, and in the new long-distance carrier AT&T, and that in the process we have not given sufficient attention to the problems of local bypass.

In Tennessee, for example, we find that local bypass is a much more current problem than long-distance bypass. I share your concern about long-distance bypass.

I am fully aware of it, and I think you have a duty and an obligation to address it, but I think that you have ignored the consequences to local telephone loops of local bypass, and the ubiquity of the local telephone service does not really serve as a barrier to the willingness of large users of local loops to come in with local bypass.

You have nursing homes, for example, putting in PBX's. You have companies with several factories in the same metropolitan area putting microwave antennas on their roofs, not for long distance, but for local.

And in areas like Manhattan, for example, you have the percentage of the total local service used by a very few large users at an extraordinarily high level, and to the extent that local charges are pushed upward in order to avoid long-distance bypass, you are going to increase local bypass to that extent, it seems to me.

Now, it is hard, given the dearth of good data about either local bypass or long-distance bypass, to measure the relative problems involved.

But I am sincerely concerned that the FCC's view of bypass has been dominated not in any venal way, but just in a very natural way, by the perspective first articulated by AT&T that has come to characterize the whole problem, and this other aspect of bypass has not really been given much attention.

Go ahead.

Mr. HALPRIN. Sir, I agree it is an expanding area, and we'll continue to look at it very closely. But, in fact, one of the reasons the FCC adopted its controversial approach of moving toward subscriber line charges rather than merely dumping these dollars back on the States was precisely because of the problem you raised.

By coming up with a subscriber line charge mechanism, it is clear that those dollars are not encouraging local bypass by the very, very big users, as you describe it. And one of the alternatives that was under consideration, which was merely pulling those dollars out of interstate rates and dumping them back on the States to recover local rates could have created rate structures with precisely the types of pressures you describe. So we have throughout this process, which has been a learning process, been concerned about that point.

Senator GORE. Well, I will not pursue it further at this point. But I would like to provide other questions for the record, and on other occasions I would like to pursue this issue further. I appreciate the Chairman's courtesy. Thank you.

Mr. FOWLER. Thank you, Senator.

Senator GOLDWATER. Thank you very much for your questions. I think they're very, very much to the point and continue to demonstrate out the increasing problems this country is going to have since we lost the monster.

Mr. Fowler, the FCC's authorization request is $96.5 million for each of the fiscal years 1986 and 1986, and I understand that your 1986 budget is $92.3. The authorization request provides a cushion of several million dollars. Can you explain how you arrived at these figures?

Mr. FOWLER. Yes, sir; we added $1,800,000, which is for a 3 percent pay supplemental for 1985, and we anticipate there will be some minor program increases of $1,089,000 so that that totals, Chairman Goldwater, the $96.5 million.

Senator GOLDWATER. Will these levels have any impact on your programs, especially enforcement and processing of applications?

Mr. FOWLER. Not significantly. If we had to have deeper cuts, though, obviously it would start to affect both enforcement and processing times. But we think we will have an adequate budget to get the job done. We do not have a cop on every block, but we have got a reasonably good enforcement system in place.

Senator GOLDWATER. On the subject of public broadcasting, as you know, last year we passed an authorization amount. It was passed by the Senate and the House and vetoed by the President. The President called me and suggested a figure that he would consider approving. We used that figure, and he disapproved that figure by vetoing it.

I have a strong feeling the President wants to do away with public broadcasting. What do you think?

Mr. FOWLER. I would rather not comment, sir.

Senator GOLDWATER. Well, do you think so or not?

Mr. FOWLER. Well, I do not know that he is trying to do away with it. I think the view of the White House would be that everyone, every entity that receives taxpayer dollars should do its part to help with the deficit problem. I think that is probably what they would say.

Senator **Goldwater**. Well, it seems like anything we come up with they are going to veto. And I am not concerned about the established stations, university stations that seem to be able to make it. I am concerned about little stations like Las Cruces, NM, and similar size communities where really the only source of money they have to provide decent broadcasting is Federal money. What I consider the only consistently decent television and broadcasting comes from public broadcasting. But these stations are constantly running into the problem of Presidential vetos. And this is not operating money; it is new equipment money. Some of those fellows are operating with equipment that should not be operating. You know that.

Mr. **Fowler**. I have heard that.

Senator **Goldwater**. You have heard it. Hell, you have seen it.

Mr. **Fowler**. I have not seen it, but I have certainly heard it.

Senator **Goldwater**. You ought to get out and take a look.

Mr. **Fowler**. Yes, sir.

Senator **Goldwater**. I would like to get an answer to that, because it is going to come up again. I do not want to have to get into a fight with my President. It is easy to do, but I do not like it.

Now, switching over to a field that gets a little closer to my home, amateur radio. I have been interested in the rulemaking which proposes to permit cable systems to leak more of their signal into the air waves.

Am I correct in believing that no change is proposed to the second half of the present governing scheme; that is, regardless of whether any leakage is above or below the minimum standards, the cable operator is in all cases responsible for eliminating any interference to communications caused by the leakage?

Mr. **Fowler**. Yes, Chairman Goldwater, that is correct. The cable operator may not interfere, and that is a black letter rule.

Senator **Goldwater**. Then say it can clearly be proven that amateur radio is providing the interference. Would the cable operator still——

Mr. **Fowler**. If the amateur radio operator is providing interference to the cable system?

Senator **Goldwater**. No. Either way.

Mr. **Fowler**. Absolutely.

Senator **Goldwater**. I hope you enforce that.

Mr. **Fowler**. We are. But we also need your S. 66, which would give us a little more enforcement power than we have now by providing criminal penalties. So we support S. 66 very strongly.

Senator **Goldwater**. I would strongly propose that you give further public notice to the excellent printed matter you have on interference. It is by far the best ever written, and it will avoid, I think, a lot of court cases, a lot of cut antenna wires and all sorts of things.

As you mentioned, I have introduced the bill, S. 66, to clarify the Communications Act that willful and malicious interference, no matter on what frequency or caused by an FCC licensee or not, is prohibited.

Do you believe this would help your enforcement efforts?

Mr. FOWLER. Absolutely. We totally support the bill. As I mentioned, we really need something to permit us to get these people into Federal district court and to have the threat of criminal as well as civil penalties visited on people who willfully interfere.

Now we only have administrative sanctions. We can revoke their license, or we can fine them. But a criminal penalty, Senator, I think is just exactly what we need.

Senator GOLDWATER. I could not agree with you more.

Mr. FOWLER. Either we are going to try to discourage this and shut this down or we are not, and if people persist in a willful manner, it seems to me that there ought to be a criminal penalty.

Senator GOLDWATER. Well, the regulations, as you know, practically do not touch malicious interference or even the use of indecent, foul language. And about the only thing that has ever governed in the amateur field has been the fact that most amateurs feel it is a lady and gentleman type of thing. But I often hear the foulest language you want to hear.

I hope this bill passes, and I hope you will use it.

Mr. FOWLER. We support it, sir.

Senator GOLDWATER. Fine.

Now, let us jump around a little more. You touched on the network takeovers, and I have a meeting scheduled either today or tomorrow with the ABC people, so I cannot talk too intelligently about that. But I see nothing in the law that prevents it.

Do you find anything wrong with it?

Mr. FOWLER. No, sir, I do not, as long as the procedures are adhered to, and as long as we administer them in an impartial and fair and evenhanded way.

Senator GOLDWATER. Would you have any role to play in this merger with ABC or other rumored takeovers?

Mr. FOWLER. Yes, sir. That would require our consent.

Senator GOLDWATER. Would that apply to Senator Helms buying CBS?

Mr. FOWLER. Indeed. So you have more to say on this than you ever even believed.

Senator GOLDWATER. You and I have discussed this quite a few times, the issuance of licenses by lottery. Are you still satisfied with it?

Mr. FOWLER. Well, it has drawbacks, frankly, and we are seeing more of the drawbacks every day. Basically, you have got about four ways you can assign the stuff. You can allocate the stuff between mutually exclusive applicants. I want the channel; you want the channel. How do we decide?

Well, you can have a comparative hearing where we kind of come up with different criteria to judge one applicant against the other. But as one who has applied comparative policies in hearings, as a practicing attorney I can tell you it is a very subjective, arduous, costly process.

The problem with comparative hearings, aside from a lot of paper and a lot of legal fees, is it takes years sometimes, and that means that the agency expends resources that it ought not to have to. It means the private parties have incredible legal fees and other expenses. This also discourages the little guys from getting into the game. And the public is disserved because it means that a new service takes, let us say, 4 years to get out.

So we wanted to look and see is there some better way. Well, yes, you can use lotteries. Say we want to make sure you are basically qualified. You cannot get in the lottery unless you show us that you are technically qualified or financially qualified, depending on the service, and legally qualified. Once you show that, you are in the lottery.

But the problem there has been that, for example, in cellular radio, telephones in cars, the word has spread like wildfire when we started to say we would consider using lotteries for market 61 and beyond—excuse me—31 and beyond. And as a result of that, we had roughly 500 applications filed for markets 61 through 90, and after that we announced we were going to use a lottery, and for markets 91 through 120 we had 5,000 applications filed, basically for the nonwireline side. And a lot of these look to be applications that are shams where one person has his daughter and his brother-in-law on different applications, all filing like a lottery. It is sweepstakes time. And the problem with the number is it is going to cause a severe delay and great cost to the agency to process 5,000 applications just for markets 91 through 120. In low power television where we have a lottery, Jim McKinney had 25,000 applications filed for low power TV.

So back to the drawing boards. What other ways can we do it? Well, we could use an auction, and maybe the idea of using an auction and not for existing licensees or for services that we have already allocated spectrum to, that perhaps some of the newer, higher frequency spectrum up in the gigaHertz, 1 1/2 gigaHertz, for example, we could use an auction and say whoever is interested in putting a service on here has got to pay for it.

Now, the advantages are: it is pretty quick, it is pretty clean. It assures us that whoever bids the highest generally will have to put it to the best and highest use, and it puts money into the U.S. Treasury instead of giving it away. We basically have one of the biggest welfare programs in the country at the FCC. We have given away cellular licenses that are worth millions of dollars. If we had auctioned off cellular licenses in the markets 1 through 90, there is some estimates that say we would have put over a billion dollars into the U.S. Treasury. So we would like to look at auctions as a possible way to do it.

Then there is another way to do it; that is, administrative fiat where you say the first guy who files for this channel gets it. And we are pulling that in effect now for FM. After there is a period of time when we put a notice out, if we put a new channel in, everybody has a chance to file. They have 30 days from the time the notice comes out. If they do not file, then after that it could be 2 or 3 years. In Las Cruces, NM if somebody files, he gets it, because he was the first one to file. Let us get the service out to the people.

Those are basically the ways you can do it. The problem is, Senator, none of them are perfect. They all have drawbacks. Each one makes somebody unhappy for some reason. But the comparative hearing process and lotteries do not seem to be working terribly well.

Senator **Goldwater**. Well, neither one of us thought that it would.

Mr. **Fowler**. I have to say you were right. I said let us do lotteries for cellular, and you said gee, I do not know if that is going to work. Well, in some ways it has not.

Now, the one thing that it has done in the markets 31 through 90, we threatened to use lotteries, and everybody was so afraid that had already filed prior to that that they went ahead and settled it because they were afraid of a lottery. But now we have got 5,000 applications for markets 91 to 120. That is the rub.

Senator **Goldwater**. Well, in your heart you know I am right.

Before I leave this—and this was one of the reasons that you and I originally talked about it—I have had a lot of questions asked of me by black people and by Hispanics, by Indians, all of whom want a little cut in this. And the natural operation of a lottery, because of the preponderance of nonblack, Indian, or Hispanics, would rule against them.

Are they getting a fair share, do you think, of the licenses?

Mr. **Fowler**. Well, the Congress provided us with a lottery which provides for preferences for minorities. You know, maybe you and I disagree on that. I do not like the idea of just basing the preferences on skin color, but nevertheless, we have a statute, and we are going to enforce it and apply it.

Now, Senator, we have had some good results. In low power television, for example, how many lotteries have we had so far, Jim?

Mr. **McKinney**. We have conducted about 500 lotteries. Of the ones where minorities participated—there were 212 lotteries where the minorities participated—they won 122. The statute provided for a 2 for 1 preference. That has sometimes, depending on where you look at it in time, it has been above 2 to 1 or below 2 to 1. But as of today, minorities have won 122 of the 212 lotteries they participated in.

Mr. **Fowler**. That is not bad, but we have a long way to go, and there are a lot of things we can do and are doing to foster minority ownership. A lot of it has to do, however, with a lack of finances. That makes it pretty tough for us in that area to do very much, although we have tried to do a lot.

Senator **Goldwater**. Looking now at cable, after several years of hard work we finally passed a cable bill. Before we passed the bill, the FCC was headed in a deregulatory fashion, and I hope you continue in that direction as you put that law into effect.

Could you summarize now how your rulemakings are going and tell us if any other issues may arise in implementing the cable act?

Mr. **Fowler**. Yes, Chairman. There are two basic parts. One of the two main parts is the EEO piece of the legislation. We put that up for rulemaking. That will come in sometime this September. The other part is defining effective competition. That is due to come in very shortly, April 11th. It will be on the agenda for the April 11th meeting in order to meet an April 28 deadline of 180 days from the time the legislation was enacted.

Jim McKinney, Senator Goldwater, might speak to some of the other issues that you may see cropping up.

Jim.

Mr. McKinney. The rulemaking that is out on the EEO that comes back in September is strictly that. It concerns only the EEO provisions of the bill. But the rulemaking that is about to come home on April 11 will primarily concern itself with effective competition: when does effective competition prevail in the local area. And also, when that competition does not prevail, what form of rate regulations shall there be for those remaining cable systems that will still be regulated under the statute.

There are also other provisions that we will be deciding at that time that have a fair amount of relevance, and they have to do with telephone company cross-ownership and matters concerning the definitions of systems, all of which if decided the right way, will provide considerable deregulation; if decided, in my view the wrong way, will reverse the deregulation. We, of course, are going to try to do it the right way to encourage and further the deregulation that the bill we think intended.

Senator Goldwater. I thought you made a very good statement by the way, Mr. Chairman, and I noted several questions to ask.

Mr. Fowler. Thank you, Mr. Chairman.

Senator Goldwater. You say you have 675 low power TV stations out now and about 6,000 T-V translator stations?

Mr. Fowler. Yes, sir.

Senator Goldwater. How many do you think it is going to take to properly cover the country?

Mr. McKinney. We made an estimate. If you packed the United States as tightly as you possibly could with low power television, how many could you squeeze in. And I think our estimate takes us to between 2,000 and 3,000 additional low power television stations. You virtually could have a low power television station in every county in the United States.

Senator Goldwater. Well, with some of them it will take more than one.

Mr. McKinney. Indeed, it will, given the population and whether or not there is a sufficient audience base to support it.

Senator Goldwater. And you see 5,182 applications in June 1984 for markers 91 through 120, 10 times as many as you received earlier?.

Mr. Fowler. That is part of the bad thing about the lottery.

Senator Goldwater. I do not like the lottery any more than you do, but with these numbers I do not know how you are going to work it any differently.

Mr. Fowler. It is better than comparative hearings. Auctions probably would be better than either, as long as you did not use auctions for broadcast outlets in order to denigrate the minority preference. You do not want to do that. That is in the law. Or to existing licensees.

Senator Goldwater. You had one statement in here that I might as well ask you a question about. You may not have the answer, but you can get it.

You talk about "One important 1986 initiative provides for enhancing our primary computer which handles the bulk of our Washington license processing. It has become completely saturated, and by moving to more efficient hardware, et cetera, we hope to improve our productivity."

How much money are you talking about?

Mr. FOWLER. Let me turn this over to Ed Minkel, our managing director.

Mr. MINKEL. We are talking about a total of about $800,000 in fiscal year 1986, and this computer also handles most of the license processing for the Gettysburg facility.

Senator GOLDWATER. These are amateur licenses?

Mr. MINKEL. Amateur, marine, land mobile, and also the broadcast TV licensees.

Senator GOLDWATER. Have you dropped the requirement for aviation licensing?

Mr. McKINNEY. No, sir. We still license aircraft.

Senator GOLDWATER. I read the other day that you did not require a license to talk air-to-ground.

Mr. McKINNEY. We dropped the requirement for the operator's license, but the license for the aircraft itself still remains.

Senator GOLDWATER. Well, that is about all I have. I have my vice chairman sitting here with me, a man I have never known to run out of questions or words.

Welcome Fritz.

Senator HOLLINGS. Well, I thank you, Mr. Chairman.

I do apologize to you and Chairman Fowler for having to leave. We had Secretary Baldridge over there at the Appropriations Subcommittee, and we were getting into communications and negotiations with the Japanese, and I apologize.

I am delighted to be here. I do not have many questions other than what I would submit for the record.

Over the past two years, the Congress has been very adept at overturning decisions of the Commission, Chairman Fowler: The access charge, the financial interest syndication rules, increasing national ownership of broadcast stations. I hope this public television swap issue does not become another one. Public television's allocation was given, some 30 years ago and it should not be diminished. I see this happening too late, Mr. Chairman, in the aviation industry—and you are an expert on both aviation and communications.

We had allocated to my hometown certain landing rights for public convenience and necessity to that particular town, and operated by National Airlines and then merged in with Pan Am, and then Air Florida came in, and Air Florida sold the rights. There is a financial benefit to Air Florida.

The community had those landing rights—and its very competitive to get landing rights in most places like the District of Columbia here at the National Airport—the community lost that. It was all established on convenience and necessity but exappropriated, you might say, by an individual airline, and a fortune was made out of it, and now we do not have the service.

Now, I am looking at that virus transmitting to communications. About 32 or 33 years ago the Federal Communications in its wisdom allocated certain VHF channels to public television, and it has worked, and it has worked so well that I hear now down in Tampa, and perhaps other places, they are considering selling that for a tremendous sum of money.

I am not interested in the profit for the particular party. I do not know them. I only heard about it recently. But I hope the Commission would look at it carefully from the fundamental that this has been allocated for the public good for the extension, you might say, and better viewing of public television, and not to be sold off even though, you know, you can make a good profit selling them, swapping them, or whatever.

And the reason, of course, for the swap and the remuneration is that the private commercial network comes in and gets that particular channel and is advantaged by it. The very price paid at the time of swap indicates the benefit, and when it is a loss of benefit, it is a loss of benefit to all of us.

And so I hope that the Commission will be looking at that. Do you have any comment? Do you know about this? Do you have a feel for it? I understand you also—well, I do not hesitate with questions; you do not hesitate in giving answers.

Mr. FOWLER. Well, I do hesitate. But, Senator, this is a proceeding we have ongoing now. Basically it was precipitated by some educational broadcasters who came to us and said look, our backs are against the wall. We are having funding problems. We have had this problem for years. We are living hand to mouth. UHF and VHF are diminishing in terms of the differences to television viewers. If we go to channel 44, we are on channel 3, and we could get $25 or $30 million, we will have a tremendous endowment. We can live off the interest every year, and we can begin to truly produce great educational television programming in the Tampa Bay market. We would like to be able to have that option.

If we go to channel 44, which is the commercial broadcaster there, they have assured us they are going to give us a 5 million or 3 million watt transmitter so that our coverage will be the same as what we have now on the VHF channel.

I think I can do more good because I am confident I am unique. People go to channel 44 for my PBS broadcasting. I am the only one in the market. But I sure need this $25 million. I could do a lot more.

Now, that was what precipitated it. Now, people could argue over where the public interest lies. All we are doing here, Senator, is simply asking the questions should we permit this if a public broadcaster in the market comes to us and proposes it, and what things ought we to look at. And if indeed UHF and VHF are diminishing in terms of difference, if a general manager is making a calculation, if I am on channel 26 in Washington rather than channel 4, that really does not matter very much. People will come to me. But I have got to have the money to operate. That is something I think we should look at.

Senator HOLLINGS. Well, if the VHF and UHF differential is diminishing, why is the swap worth $50 million?

Mr. FOWLER. Well, when cable comes into a market, for example, you have them virtually equal, but still there is a comparability difference. I am saying it is reducing. Commercial broadcasters think it is better to be on VHF. They are willing to pay that kind of money. But the point is that a lot of the public broadcasters, even with those differences, are telling me at least look, if I am on channel 44 instead of channel 3, I am confident that almost all of my audience is going to come there; but I can do so much more with an endowment of $30 million.

Senator HOLLINGS. Well, they are solving a financial problem that should be handled in a different way rather than just selling off the properties. We have had that recommended. We have just gotten through last week in the Budget Committee, and now that we have robbed the piggybanks of America, one of the Senators suggested we sell the banks.

Senator GOLDWATER. This is just a technical observation. You have your engineers with you. I cannot understand anybody wanting to pay that kind of money for a UHF channel. Sometimes the signal won't even go over the hill. This is line of sight television. And where Senator Hollings lives, although you do not have great big mountains, you have a lot of bumps, and like out in my country, UHF is not worth a doggone if you do not live within sight of the antenna.

Where does the $50 million come in?

Mr. FOWLER. That is where the judgment of the broadcaster comes in; that is, the educational broadcaster. In Chicago, for example, they were offered, I think, something over $100 million to do a swap, but they refused to do it because they were concerned about terrain problems outside of the immediate Chicago area. In Tampa, however, it is virtually flat, all of Florida, so they did not have that concern.

Senator GOLDWATER. What about South Carolina?

Mr. FOWLER. I think the answer there is that public broadcasters would simply have the option. No one would be forcing them to do that.

Senator HOLLINGS. I would prefer not to give them that option. We have got the policy, and it has been a 30 some year policy, and it has worked extremely well. True, we have budgetary constraints on everything. We just voted last week to freeze Federal employees for 2 years. That will be a cut in 200,000 Federal employees. And so we are going through those constraints, but let us not momentarily solve the financial problem of any TV stations by selling off the properties. Let us establish what the public good is. They will all just solve their financial problems momentarily. Just as they have indicated, they would love an endowment. They could care less about the long-term viewing public or anything else. Then they can put on their programs, and the endowment will last my 10 or 15 years that I might be on that board, and then what happens later on, the heck with it. Let them figure it out. I have all my problems solved. I have $50 million over here. That is a wonderful setup.

Mr. FOWLER. I think a lot of the public broadcasters take their public responsibilities very seriously. And I think they would only make that kind of a decision in conjunction with their board of directors if they truly thought it served the public they are trying to serve. They are pretty dedicated people. I do not think they would deal unless they thought it overall was in their interests.

Senator HOLLINGS. But they will use that particular precedent to say public broadcasting needs no financial funding. The next thing we will hear, look at the properties; all they need to do is go ahead and do a swap like they did down in Tampa, if that were to occur, and then we would be back into what you and I struggled with all last year, Mr. Chairman. I just hope you look at that in a different light.

You and I are trial lawyers. That is begging the question. They should not have the option. The option is to go to the public, and if they cannot maintain it financially, they can get another crowd that can.

We are all struggling. We are struggling here trying to give them more money, and the White House over there is vetoing it. But that does not mean then that the solution is to go ahead and give them options by selling out all the blooming properties, and giving them all an endowment, and changing public television over this land.

Mr. **Fowler**. Well, if you are able to have an endowment and produce programming and operate the station in a much better manner with much better programming in a market, and the audience is still watching you, why should they not have the option? That is what they would argue.

Senator **Hollings**. They would argue that, but why would you pay $50 million for it?

Mr. **Fowler**. Again, they do not have competition such as the commercial broadcasters do. The commercial UHF broadcaster has a pretty tough row to hoe against his VHF competitors. But if you are a PBS station, you are the only game in town, and some of them feel that their audience will go with them to channel 21 or channel 23, but they are having a tough time keeping the doors open.

Senator **Hollings**. Well, that is not your problem. Your problem is the overall Federal Communications Commission policy. What about those stations that do not have, let us say, a swap in the individual case? And I want to paraphrase a quote George Washington about the amending of the Constitution: Let it be done by the way in which the Constitution designates. While usurpation may in the one instance be the instrument of good, it is the customary weapon by which free governments are destroyed.

Here you are going to destroy public television just because in the one instance the instrument of possible good—in Tampa—the majority of the stations do not have the swap. Then we will be sitting up here as a committee.

Mr. Chairman, you say well, wait a minute. Now we have the rich and the poor. It sounds like the budget and the economy. We have got a bunch of fat, rich stations, and they do not need any money, and then how do we get it to those who are not. And then we will have a welfare television network rather than a public television network.

No, I hope you will slow down and stop that. We do not want to start that particular precedent at the Federal Communications Commission. I am very hopeful about it.

I am late, Mr. Chairman, and I appreciate it. I will submit the rest of my questions here for the record.

Mr. **Fowler**. Thank you, Senator.

Senator **Hollings**. Thank you.

Senator **Goldwater**. It is always a pleasure to have you here.

Senator **Hollings**. Thank you, sir. Glad to be with you.

Senator GOLDWATER. I would rather have you here than on that Budget Committee.

Senator HOLLINGS. This is much more pleasant. I have been on that Budget Committee saying "no" for the last 9 years now.

Senator GOLDWATER. I am busy writing the military budget, and we will wind up with bows and arrows.

I want to thank you gentlemen for coming. This has been a very good meeting. As I said, do not expect a lot of meetings of the Communications Subcommittee, because I am a great believer that it is the laws that we do not pass that help.

The meeting is adjourned.

[Whereupon, at 10:55 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Question. I recently spoke to a group of long distance carriers, some of whom expressed concern that the implementation of equal access is not providing them the opportunity to compete effectively. What I'm trying to understand is whether equal access equals effective competition? Does the actual conversion schedule create a problem for the OCC's marketing their services effectively so that competition really does exist? For example, do the OCC's face legitimate problems in targeting customers in areas that have been cut over? Do they market an entire city in an attempt to reach those customers in cut over areas?

Answer. The other common carriers which compete with AT&T in the provision of interexchange services have, for many years, cited the absence of equal access as a major impediment to a truly competitive marketplace for these services. Based in part on these arguments, the Justice Department required that the BOCs provide all interexchange carriers with local exchange access which is generally equivalent to that provided to AT&T as part of the AT&T divestiture. The court has established a schedule for implementation of equal access and is monitoring BOC progress in this area.

The Commission is aware that certain interexchange carriers have raised concerns about the implementation of equal access and the marketing of their competitive long distance services in this new environment. The routing of default traffic (the interstate toll traffic generated by customers who do not designate a long distance carrier) is one of the major issues in this regard. Although most of the interexchange carriers presently route all default traffic to AT&T, Northwestern Bell has implemented a plan for pro-rate assignment of these customers among all the interexchange carriers. The Commission has raised questions concerning the lawfulness of routing all default traffic to a single interexchange carrier and instituted proceedings to consider changes in this area. Comments addressing this issue are due April 4, 1985 and replies are due April 15, 1985.

The Commission has also approved a proposal by the Exchange Carrier Standards Association (ESCA) designed to achieve voluntary resolution of problems related to the implementation of equal access. This approach establishes a mechanism for resolution of disputes between exchange carriers and interexchange carriers involving issues of general industry concern when these matters cannot be resolved in one-on-one negotiations. The committee (composed of exchange carrier, interexchange carrier, and user representatives) that will administer the dispute resolution process has already begun to meet. We are monitoring this process to ensure that it facilitates the implementation of equal access. If voluntary resolution of a particular question cannot be achieved, the carriers involved are also be free to use the complaint process provided for in Section 208 of the Communications Act.

The Commission believes that a decision on the allocation of default traffic in conjunction with the forum process for dispute resolution should allow a reasonably smooth transition to the new equal access environment. We are presently monitoring conversion to equal access in order to determine what, if any, problems are developing. If future developments demonstrate the need for further Commission action in this area, we will take whatever steps are appropriate to ensure that equal access is implemented in a timely and even-handed manner.

Question. Along with whether equal access means effective competition is the dilemma of how the FCC will treat AT&T. Where do you see the FCC moving and how quickly?

Answer. The Commission must continually review its regulation of AT&T to respond to the evolving interexchange telecommunications marketplace. Pursuant to a Notice of Proposed Rulemaking issued January 9, 1985, the FCC is presently considering guidelines for the review of optional MTS offerings such as AT&T's Reach Out America. Specifically, the Commission is considering whether MTS usage charges may be distance insensitive or may increase with their mileage between the call's origination and termination points, and whether to allow subscription, termination and minimum monthly charges. Three such guidelines under consideration are: (1) the offering must increase the carrier's MTS net revenues compared to an offering without the discount or package; (2) no such offering could unreasonably restrict customer selection, resale, sharing or interconnections and; (3) the offering must be made available to all of a dominant carrier's MTS customers on a reasonable schedule.

Comments and reply comments on the proposed guidelines were filed in February and March 1985. On February 12, 1985, AT&T files a proposed optional MTS calling plan called "PRO-America," which is aimed primarily at larger users. This tariff filing is scheduled to become effective May 1, 1985. Petitions to reject or suspend and investigate this tariff proposal were filed in February 1985.

In October 1983, the FCC adopted a Notice of Inquiry on long-run regulation of AT&T's domestic, basic and interstate services. The Inquiry seeks information and analysis in four areas: (1) costs and benefits of continuing the present regulatory scrutiny of AT&T through 1990; (2) possible options for reduced regulation of AT&T; (3) under what conditions we might pursue each option; and (4) how to assess AT&T's market power. Comments and reply comments were received in April and May 1984. The record in this Inquiry will provide information on the development of competition in the industry. It will also aid the FCC in collecting relevant information towards developing optional regulation of AT&T. This record will thus be useful in formulating proposals to modify the regulation of AT&T during the transition to a competitive environment.

QUESTIONS OF SENATOR GOLDWATER AND THE ANSWERS

Answer. The following responds to Senator Goldwater's question concerning the Commission's goals to increasing minority ownership and assisting daytime broadcasters in relation ot the addition of several hundred new FM stations:

As you are aware, the Commission over the years has enunciated various policies to increase the ownership of broadcast stations by monorities. Such policies include distress sale and tax certificate treatment where broadcast properties are sold to minorities. In addition, minorities can receive special credit in a comparative hearing for a new facility.

The Commission also has a strong commitment to improve the ability of daytime-only licensees to obtain expanded service. Thus, we have elevated the comparative credit given for past broadcast experience when a daytime-only licensee has satisfied certain conditions. This credit will be equal in weight to the credit given for minority ownership and will thus allow the Commission to correctly balance our two policy concerns whenever applicants apply for new FM facilities.

Question. In one service that I have a little personal experience, the amateur service, there seems to be a problem with interferrence between two meter repeaters and repeater users. Can you tell me how the Commission is addressing this issue?

Answer. The Commission has organized an amateur auxiliary and has elicited the cooperation of the American Radio Relay League in its implementation in order to address these and other amateur enforcement-related issues. Also, the amateur community has responded to these problems by voluntarily coordinating two-meter and other repeater usage in geographical areas with severe repeater congestion. The Commission has adopted an enforcement policy of favoring coordinated repeaters over repeaters which are not coordinated in interference disputes. In an ongoing rule making proceeding, PR Docket No. 85-22, the Commission proposed codifying this enforcement policy in its rules.

Question. I don't disagree that this subject deserves consideration, however, I expect the Commission to consider whether the volunteer monitoring program that is just getting started under authority of P.L. 97-259 might resolve some of these problems, if given a chance.

Answer. More than 250 trained monitoring volunteers are now participating in the maintenance monitoring function. They will begin to consider repeater complaints in the next several months. While this will assist the Commission in detection of repeater interference, long-term resolution of ongoing interference problems caused by the relative locations of two repeaters or their design characteristics requires additional consideration. The voluntary repeater coordination efforts of local amateur organizations appear properly directed to these root causes of repeater interference.

Question. I'm also concerned about whether more regulation will remove the incentive and ability to experiment with new spectrum-efficient technologies, and I hope that any new Commisssion regulations will not act as disincentives to experimentation by establishing repeater spacing assignments that can only be changed by another lengthy FCC proceeding.

Answer. In its current docket regarding amateur repeater interfernce, the Commission proposes no new regulation that is not already current operating enforcement practice and policy. No mandatory spacing requirements or any sort of mandatory frequency coordination have been proposed, nor does the Commission seek to impose such requirements. The current proceeding proposes to affirm by rule the Commission's narrow policy, in instances of established repeater-to-repeater interference, of giving the nod to the repeater operation which has been coordinated by a local amateur organization.

Question. Public Broadcasters are having a hard time making financial ends meet these days. What is the commission doing to help these stations make the most of their technical facilities while still providing good noncommercial programming?

Answer. The Commission participated in the Temporary Commission on Alternative Financing and the final report was made to Congress in 1984. One of the suggestions made by the Report called for the Commission to liberalize its rules governing underwriting acknowledgements in order to permit the use of product or trade names. The Report and Order in Docket 21136 implemented this suggestion in March, 1984.

The Commission allows public broadcasters to use their technical facilities in providing subcarrier services. Public Broadcasters are allotted 2 SCA's with one channel available for profit-making uses. The Subcarrier may be used for any broadcast or non-broadcast service which does not interfere with their main channel operation.

Public Broadcasters are allowed to utilize their studio and other technical facilities during down time for profit-making activities. Again, these activities may not interfere with their primary operations.

Question. All daytime broadcasters have provided good service to our citizens for years especially in rural areas despite their technical limitations. What has the commission been doing to help these stations improve their service to the public?

Answer. The Commission has taken a series of important actions which can be expected to aid daytime-only stations.

Effective December 1983, the Commission authorized post-sunset operation by most daytime-only AM stations which are licensed to operate from local sunrise to local sunset. When fully implemented, the rules are designed to permit operation with as much as 500 watts power for as long as two hours after sunset.

The Commission used its computer resources to perform the calculations necessary to determine the permissible powers and operating periods for all affected stations and it advised each station of the nature of the operation permitted by the new rules.

In two subsequent actions the Commission dealt with this matter and adopted further changes in the newly adopted rules that will enhance the power many of these stations can use during post-sunset operation. In an April 1984 decision, the Commission allowed increased power for many Class II–D stations, and in December, 1984, it adopted an industry sponsored compromise which is designed to offer as much benefit to Class III daytime-only stations as possible during the pre-6:00 P.M. period while minimizing both the amount and duration of interference. All Class III stations will have a power of at least 50 watts during the pre-6:00 P.M. period, and many will have substantially more power. Even after 6:00 P.M., the new calculation method will yield substantial powers during the first hour after sunset.

Implementation of post-sunset operation beyond 6:00 P.M. local time is dependent on negotiations with Mexico. The Commission has been actively involved in these negotiations and has been devoting considerable effort toward the development of the needed bilateral AM agreement with Mexico. This agreement also can be expected to provide opportunities for daytime-only stations on Mexican clear channels to obtain nighttime operation now barred by the existing U.S./Mexican Agreement.

While difficult to predict with certainty, we hope for Mexican signature within the next 12 months. We are seeking to have the next negotiation scheduled for as early as possible this year.

In addition, the Commission acted in March 1985, to provide daytime stations an important preference in comparative hearings to be held on the use of the large group of newly assigned FM channels made available through Docket 84-231.

Further actions which could benefit daytime-only stations have been proposed.

On February 12, 1985, the Commission adopted a Notice of Proposed Rule Making to amend Section 73.37(e) of the Commission's Rules to delete artificial restrictions on the filing of applications for new AM stations or major changes in existing AM stations. Section 73.37(e) as it now stands restricts such applications unless they would bring service to unserved or underserved areas or communities, or, in the case of certain clear channel proposals, minority or public radio applicants which could file even if they did not meet the otherwise applicable restrictions.

In proposing to delete these restrictions the Commission observed that they had been imposed at a much earlier stage in the development of aural broadcasting when it may have been necessary to preserve opportunities for stations to be established in underserved areas of the country. However, considering the maturity of the AM service and the long-term imposition of the Section 73.37(e) restrictions, the Commission questioned whether there continued to be demand in the remaining eligible communities. The small number of filings in recent years suggests that there is little demand in the areas where applications now can be filed. However, there is substantial interest in filings for areas and by entities not now eligible to file.

Under such circumstances, it appeared to be inappropriate to stifle opportunities for improving the diversity that new voices would bring to the marketplace. Accordingly, the Commission proposed to delete this restriction so that other entities could file as well. All previously eligible applications for underserved areas or by minorities or educational interests would continue to be acceptable for filing and would continue to be judged by the comparative criteria applicable to such proposals.

The Commission also has been working to make possible new AM nighttime operations on channels on which such operations have been barred by international agreements. The Commission has participated extensively in negotiations leading to easing these restrictions and it has been conducting the necessary rule making proceeding to set the standards for the use of these frequencies.

The terms of the North American Regional Broadcasting Agreement (NARBA) have prohibited new nighttime AM operation on the Canadian and Bahamian Class I-A Clear Channels within 650 miles of the Canadian border and of the Bahama Islands, respectively. The bilateral agreement on AM broadcasting between the U.S. and Mexico is even more restrictive. It precludes *any* new nighttime operaton by one country on the Class I-A Clear Channels of the other country. The bilateral agreement with Canada signed on January 17, 1984, supersedes NARBA with respect to U.S. and Canadian relations and permits U.S. stations to operate on the Canadian Class I-A Clear Channels anywhere in the U.S., provided requisite protection is given to Canadian assignments. Although NARBA remains applicable with regard to the Bahamian Class I-A Clear Channel, the Bahamas has indicated its intent to denounce NARBA. Once this action is taken and becomes effective, the 650-mile restriction will no longer apply to the Bahamian Clear Channel. The U.S. and Mexico are in the process of negotiating a new bilateral AM agreement which would supersede the existing Agreement. Considerable progress has been made in developing an agreement which would remove the restrictions on new nighttime operations on the Mexican clear channels, and negotiations are continuing. The effect of these changes is to create numerous additional opportunities for new nighttime service within the U.S.

Action on the Commission rule making proceeding dealing with how best to use the newly available frequency space will be taken in the 3rd Quarter, Fy 85.

Finally, the Commission has been actively involved in the preparations for the upcoming Regional AM Broadcasting conference to expand the AM band to 1605–1705 kHz. It has issued two Notices of Inquiry to obtain views on the technical criteria and planning methods to be used for the 10 new AM channels to be added.

In addition, the Commission has been obtaining valuable contributions from two subgroups of the Industry Radio Advisory Group. The technical subgroup has been considering the engineering questions posed by the proposed expansion and the allocations subgroup has been working to identify broadcast requirements to be satisfied through use of the band. These efforts will continue in preparation for the first session of the Conference which begins in April, 1986. Applications may not be filed for several years until the international coordination is completed.

Question. I expressed concern to you in early February that you not extend the final reply period on the rulemaking concerning the development of alternative satellite systems beyond June 5. I believe this issue has undergone extensive and thorough review, but I understand there is continued pressure from some interested parties to delay a decision. I want to reiterate that I believe U.S. interests will not be served by further delay and ask if you remain committed to no further extensions and to proceeding as expeditiously as possible?

Answer. The Commission does not contemplate any further extensions of time for comments and replies in Docket No. 84-1299 beyond June 5. No party has requested additional time nor do we anticipate such a request. The Commission of course will review any request for additional time that may be filed. The current procedural schedule in Docket No. 84-1299 should provide adequate opportunity for all interested parties to prepare comments, and set forth their views. Therefore, we intend to proceed as expeditiously as possible based on the record that is established in the docket.

Question. The Congress remains committed to ensuring that universal service continues. Can you tell me what is happening with the liefline issue? Are the poor and the elderly dropping off the network? If there is drop-off will the FCC propose a satisfactory remedy?

Answer. At the outset, let me assure you that the Commission is dedicated to the preservation of universal telephone service and shares your commitment to the continuation of affordable telephone rates designed to meet the needs of low-income subscribers. We have conducted two comprehensive studies of the effect of subscriber line charges and federal decisions in general on universal telephone service. In both cases, we found that there was no evidence of adverse effects on universal telephone service. However, we are aware that significant increases in the price of basic telephone service could undermine the goal of universal service. We believe that our adoption of the Federal-State Joint Board's recommendations concerning subscriber line charges, high cost assistance and lifeline service demonstrates our continuing commitment in this area.

In particular, the Commission has adopted a two-step process for addressing concerns about the affordability of telephone service for low-income subscribers. First, we adopted measures that allow the effective waive of the subscriber line charge for low-income households upon the implementation of an appropriate state-established means test. Thus, implementation of the limited subscriber line charge adopted by the Commission need not place additional costs on low-income households. Second, the Commission has directed the Joint Board to issue a request for comments by March 31, 1985, concerning broader lifeline measures. The Joint Board's request for comments was released March 29, 1985. The Joint Board will make a recommendation to the Commission on the broader lifeline questions within 180 days of the releaase of the request for comments. We are confident that sound, cost-effective measures for dealing with the need for lifeline telephone service can be developed through the Joint Board process over next six months in cooperation with state regulators, the industry and Congress.

Question. I understand that the Commission recently authorized certain Bell Operating Companies to perform "protocal conversion" in their telephone facilities. What is this "protocol conversion" and what does the Commission's action mean for the public and for the firms I understand are already performing these services?

Answer. The type of "protocol conversion" the BOCs sought to perform would permit them to offer local packet switched data transport services that are compatible with the millions of personal computers and low-cost terminals that are in homes and businesses. If the BOCs were not permitted to perform this "protocol conversion", they could not deploy effective local packet switched facilities, and data transport would continue to be carried inefficiently on existing telephone facilities.

As a result, users of more than 2 million personal computers in the United States now equipped with telephone interfaces ("modems") can use these new services when they are made available, and users of the more than 10 million other personal computers can do so by purchasing a low cost telephone interface for some $50 to $300.

The FCC's action will make unnecessary new construction of costly telephone facilities and will bring the benefits of packet-switched data transport to areas that do not receive these benefits now. And, there are efficiencies that will flow from grant of this authority which can result in lower prices to the public than currently.

Since a number of firms already offer somewhat similar services, we have conditioned the grant of this new authority to ensure that only true efficiencies, and not anticompetitive practices, will be reflected in the BOCs' pricing of these new offerings. We strongly believe that, by this action, competition and its benefits in data communications will be furthered.

Question. In light of the anticipated doubling of the number of access tariffs to befiled at the Commission this year and the complexity of the issues involved, how can the Commission adequately review all these filings, along with the non-access tariffs it receives?

Answer. The Commission has taken several steps in the past year to ensure that the tariff review process is optimally effective. First, we have streamlined tariff ruling procedures in our rewrite of Part 61, eliminating many of the antiquated and redundant requirements contained in these rules since 1939. Second, we have reduced the number of non-access tariffs to be filed at the Commission by ordering non-dominant carriers treated by forbearance through the Competitive Carrier Rulemaking to cancel their tariffs by August of this year. This detariffing also serves the purpose of reducing the regulatory burden on new carriers entering the marketplace and increasing competiton. In the past year, we have classified several additional categories of carriers as forborne including domestic satellite carriers, miscelleneous common carriers, carriers providing domestic, interstate and interexchange digital transmission networks and affiliates of exchange carriers providing interstate, interexchange services. Finally, we have instituted cost monitoring procedures that will provide the Commission with uniform summaries of detailed revenue, cost and expense data that it can use for the analysis of historical trends and cost justification in conjunction with proposed access tariff rates. This monitoring plan will aid the Commission in accomplishing its goals of reasonable and workable rates that allow full and fair competition in interexchange services.

Question. What is the purpose of allowing "alternative" tariffs addressed to large users? How do you explain the position of a surcharge on residential and small business users to fund these tariffs?

Answer. The alternative tariff mechanism is designed to keep telephone rates for all subscribers lower than they otherwise would be. The basic purpose of this mechanism is the allow the use of volume discount tariffs to encourage large users to stay on the local switched network. This will give the local exchange company more subscribers from which to recover its costs and will keep rates lower for everyone. In this regard, it is important to recognize that when a large user abandons use of the local exchange company's switched network, the plant serving that customer remains in place. The local company simply has fewer subscribers from whom to recover these fixed costs.

The rules adopted by the Commission require that the local companies obtain the concurrence of the state regulatory commission or the Federal-State Joint Board before filing an alternative tariff with us. Any surcharge that is necessary in conjunction with an alternative tariff will be paid by all subscribers, including multiline business subscriber line charges. It is our hope that creative use of the alternative tariff mechanism will reduce the possible need for increased subscriber line charge levels in the future.

Question. How does the subscriber line charge plan adopted by the Commission last December differ from the Commission's previous proposal which many state regulators did not support?

Answer. The plan recommended by the Joint Board and adopted by the Commission last December is substantially different from the Commission's previous approach. First, the Commission has adopted a two-pronged approach to achieving its basic goals of: (1) promoting economic efficiency; (2) preserving universal service; (3) eliminating discrimination; and (4) discouraging bypass of the local switched network. This new approach involves limited flat-rate recovery of NTS costs from subscribers, combined with flexibility to allow the local companies, working with their state commissions, the opportunity to develop alternative tariffs reflecting a highly targeted response to the problems caused by the present NTS cost-recovery system. Second, the Commission has reserved judgment on whether subscriber line charges should be raised above the $2.00 level. A further Joint Board proceeding will be instituted in late 1986 to examine the effectiveness of subscriber line charges and the alternative tariff mechanism in achieving the Commission's goals set out above. All four state members of the Joint Board joined in the recommendations subsequently adopted by the Commission, and the National Association of Regulatory Utility Commissioners endorsed the Joint Board recommendations at its convention in Los Angeles, California in November 1984.

Question. Would licensees receiving authorizations through auctions also be required to pay "cost of regulation" fees, if such fees are established?

Answer. Yes. The fact that auction winners will have paid for their assignment does not distinguish them in any meaningful way from other licensees. Indeed, many licenses were acquired from previous licensees for sums that exceeded the value of the facilities. There is no suggestion that they be excluded from paying "cost of regulation" fees. Moreover, licenses won at auction will not have different terms or conditions attached to them. Hence, there is no reason to exclude them from the responsibilities faced by other licensees who received their authorizations outside the formal auction process.

Question. Would using auctions affect the process for allocating spectrum to various uses? Would public safety communications needs continue to be adequately met if auctions were adopted?

Answer. This change would not alter in any way previous allocations of spectrum or the Commission's obligation under the Communications Act to allocate spectrum to those uses best calculated to promote the public interest. Thus, the Commission would continue to assure itself that its initial allocation of spectrum meets the legitimate needs of public safety and all other spectrum uses consistent with the public interest. Mutually exclusive applications have not been filed for public safety allotments because of the strict eligibility requirements and the cooperative nature of the users involved. Thus, we do not anticipate any occasion arising where competing applications would exist, nor would we propose to use auctions to assign public safety channels.

Question. What limitations would you propose to place on the FCC's auction authority?

Answer. We recommend the Commission's authority be circumscribed in six ways. First, auction authority should not affect the Commission's spectrum allocation obligations.

Second, the use of auctions to select initial licensees should not vary the terms, conditions, or rights of the license from those that would obtain if it had been awarded through either a comparative hearing or lottery.

Third, we do not wish to disrupt the present licensing system for media of mass communications, and, therefore, do not seek authority to utilize auctions for those services.

Fourth, because the efficiency gains of auctions only occur for initial assignments, they should only be used in the case of unassigned spectrum.

Fifth, inasmuch as there is little experience with the use of auctions in the federal licensing process, we recommend that any authority be for a temporary period; say, five years. At the end of this period, the Commission should report to Congress on our experiences with auctions and a conclusion as to whether or not to we seek authority for their continued use.

Sixth, all revenues raised through the use of auctions should be directed to the general funds of the U.S. Treasury. The earmarking of any such funds raised under this authority to any particular purpose would be inappropriate. Such earmarking would likely build a constituency for the use of auctions which would be undesirable since the Commission needs the freedom to evaluate where and when auctions work well, if at all. It would also be premature to earmark any such funds to a particular purpose before there was a reasonable idea of how much money would be raised and with what frequency. Moreover, since it would not be known where auctions would be used, there would be no necessary connection to any other publicly funded purpose.

Question. The FCC has requested an extension of travel reimbursement authority for an additional two years. Can you summarize how much you have received under this program, and generally what kind of travel was involved?

Answer. Travel taken under authority of P.L. 97-259 was primarily for attendance at non-government conferences or other group meetings at the invitation of private organizations. Two of the organizations extending such invitations were the National Association of Broadcasters and the National Cable Television Association. The following chart indicates, by fiscal year, the amount of reimbursable travel funds the Commission has received.

Fiscal year:	Number of trips taken	Amount obligated [1]	Amount reimbursed [1]
1983	77	$38,157	$32,112
1984	84	42,211	36,490
1985 (to date)	32	21,861	2,317
1986 (estimated)	80	50,000	45,000

[1] Difference between Obligated/Reimbursed reflects funds received after close of fiscal year which cannot be spent. Proposed fiscal year 1986-1987 authorization allows use of all funds reimbursed.

Question. The proposed fee schedule is very similar to the one we passed in 1983 in S. 55. Since that time, the FCC has deregulated television along the lines of radio and has eliminated other broadcasting regulations. Are those regulatory changes reflected in the proposed schedule?

Answer. Yes. Our proposed fee schedule reflects enacted legislation as well as Commission regulatory actions. Fee categories have been added to reflect new services, e.g., satellite services, low power TV, cellular radio; while other categories have been deleted because of deregulation, e.g., renewals for commercial radio and television stations, amateur radio licenses, citizen band radio licenses.

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. For some time the FCC has had a large backlog of LPTV and translator applications, and new applications have been frozen. This situation is especially frustrating in states like Oregon, where the terrain makes translators crucial for many stations and their viewers. How are you proceeding with that backlog, and when will the freeze be lifted?

Answer. By February 1984 the initial backlog of 12,000 applications was rapidly being reduced. At that time approximately 7,500 pending applications remained. 3,300 of these were processed and according to required procedures placed on a cut-off list specifying a filing date for competitive applications of March 8, 1984. Although a "freeze" on application filings was in effect, over 25,000 applicants took advantage of an exception to that freeze and filed applications mutually exclusive with the cut-off list.

With respect to this mass filing of applications we have undertaken a series of processing steps.

First, information from all the applications must be entered into the engineering data base, directional antenna data base and broadcast applications processing system. Pursuant to this process, applications are reviewed to confirm that all information necessary for processing has been provided and that there are no inconsistencies in this information. Deficient applications are returned. Then, the technical proposals set forth in the applications are studied to confirm that the stations, if authorized, would not cause interference to any authorized full service station, cable system or land mobile facility. The staff carefully evaluates the technical proposals and any proposals predicted to cause interference are returned.

Under the Commission's rules, petitions for reconsideration of the return of an application may be filed within 30 days of that action and the existence of these legal challenges must also be factored into the processing procedures.

The final and most difficult processsing stage, is the determination of the mutually exclusive application groups—that is, applications that would cause interference to each other. Low power and television translators are processed pursuant to a contour overlap formula. As a result, one proposed contour overlaps that of another which in turn overlaps another. This is the daisy chain effect, often referred to in low power television processing.

With respect to the large March group, referred to above, we are now at this latter stage of defining mutually exclusive application groups. The staff has almost completed determining mutually exclusive groups in the VHF band, which are generally smaller in this service than those in the UHF band. We have found that the most congested areas are in Texas, Florida and the northeast corridor, generally. During this year we hope to continue to process the March group—defining mutually exclusive groups, holding lotteries and authorizing additional grants.

Occasionally, a low power television or television translator application can be granted as a result of a settlement among parties or as a "singleton"—without competition. Under the Communications Act, before final grant, these applications must be placed on a "proposed grant list," which provides a period of 30 days during which the public may file petitions to deny. Very few such petitions are received.

Lotteries to select from among mutually exclusive applicants have been held since September 1983. To date over 2500 applications have been designated for lottery. Also, as a two to one preference is awarded to applicants that are at least 50 percent minority owned, minorities have been selected in 140 of the 247 lottery groups in which they participated. During the next year, as the March group of applications are processed, the number of applications in each lottery group will be increasing.

To further expedite the process, on October 17, 1984, the Commission modified the present cut-off procedures to provide for a series of open windows for filing applications. The first national window will open sometime after our present backlog is substantially reduced, in 1986. However, a smaller limited window for the State of Alaska will open during the first half of 1985.

The Commission also eliminated the requirement for filing financial information or certification with applications and specified the requirement that applicants certify that they have obtained reasonable assurance from the property owner that the proposed transmitter site is available. this should expedite processing by eliminating frivolous applications.

QUESTIONS OF SENATOR PRESSLER AND THE ANSWERS

Answer. The following responds to the question of Senator Pressler concerning the reasons for granting a preference to AM daytime licensees for the new FM stations:

The Commission's recent Docket 80-90 decision will enable a daytime-only AM licensee to receive special comparative consideration when applying for an FM facility in the same community as the daytime-only station, provided certain conditions are met. One such condition is that the daytime-only station must be divested within three years after receiving program test authorization for the new FM station.

Our decision to require divestiture was based on the fact that diversification of control of the media has long been a primary policy objective of the Commission in comparative proceedings. Indeed, since the 1965 Policy Statement of Comparative Hearings, the Commission has consistently recognized that increasing the number of different voices in the community is in the public interest. Further, as you know, the Congress in recent years has stressed the importance of diversity objectives as reflected in the lottery legislation currently used by the Commission to select winning applicants in the new Low Power Television Service. We believe that any decision to award special credit to daytimers without requiring divestiture would significantly undercut this long standing policy without the benefit of any overring counter public benefit. Thus, a decision not to require divestiture would deprive the public of an opportunity to add another diverse voice to the community.

Three years was chosen as the appropriate time period for divestiture in order to give the daytimer licensee a reasonable amount of time to effectuate an assignment of the daytime station license.

Question. Mr. Chairman, as you may know, I have introduced legislation to provide the hearing-impaired and the handicapped with equal access to the telecommunications system we have learned to rely on. With the passage of the Telecommunications for the Disabled Act of 1982, action has begun in this effort. If total compatibility were required would it relieve any regulatory burden for the Commission and how might that impact on FCC expenditures?

Answer. Presently, pursuant to the Telecommunications for the Disabled Act of 1982 (Act), the Commission's Rules specify only some locations where hearing-aid compatible equipment must be utilized. If, pursuant to the proposed legislation, total compatibility of telecommunications equipment were required, Commission rules which require retrofitting or replacement of telephones with hearing aid-compatible telephones eventually would become superfluous since all registered equipment placed into the market stream would be hearing aid-compatible. The Commission is in the process of conducting a review of the effect that passage of the amendment to the Act would have on Commission Rules.

The proposed amendments would have the initial effect of requiring the Commission to expend the resources of its staff in promulgating rules which change the registration program of Part 68 of the Commission's Rules to reflect the complete compatibility requirement. In addition, enforcement of regulations for equipment placed into service prior to the effective date of an absolute compatibility requirement would remain necessary. However, the proposed amendments are likely to result, in the long run, in a reduction of staff time and the need for Commission enforcement efforts. Of course, any specific estimate of resource requirements would depend upon the specific parameters of the legislation.

Question. What type of enforcement plan is in effect to check the compatibility of telephones in essential areas such as hospitals? I know that an extension has been granted for motel and hotel compliance but what are your future plans for enforcement there?

Answer. Section § 610(h) of the Act 47 U.S.C. 610(h), contemplates state adoption and enforcement of the requirements regarding the placement of hearing aid-compatible telephone equipment in locations designated by the Act and defined by in Section 68.112 of the Commission's Rules, 47 C.F.R. § 68.112. This delegation of power to the states is conditioned upon state adoption and enforcement of the Commission's Rules. States are free to fashion their own complaint and enforcement processes. This Commission has authority, however, to enforce the Act through its complaint process if a state decides not to act or if an appeal of a state commission ruling is filed.

The extension granted for hotel and motel compliance is a narrowly drawn exemption which defers until July 1, 1985 the effective date of the requirement that telephones in essential locations in those establishments be hearing aid-compatible. Hotels and motels are, however, required, beginning April 1, 1985, to specify in orders for new or replacement telephones that they will accept only hearing aid-compatible telephones for placement in essential locations. Enforcement procedures identical to those described above are applicable to hotels and motels.

Question. My investigation into the provision of special equipment for the disabled such as teletypewriters, the artificial larynx, and amplified headsets indicates that there is much confusion in the country as to the policy in this area since divestiture. Has the Commission had any complaints about the availability of special telephone equipment?

Answer. The Commission has received inquiries regarding the ability to purchase, rather than continue to lease, specialized telephone equipment from local telephone companies. Several complaints have been received which maintain that the equipment, although available and accessible, is too expensive. Of course, the question of tariffing specialized equipment is an issue Congress has lodged with the state commissions. Pursuant to Section § 610(g) of the Act, 47 U.S.C. § 610, state commissions are authorized to allow subsidized provision of specialized CPE on a tariffed or detariffed basis. States may fashion subsidy programs which recover reasonably prudent costs from regulated services. The Act authorizes this Commission to take remedial action when state subsidy programs exceed the Act's authorization.

Question. Mr. Chairman, your present rulemaking concerning the development of alternative international satelite systems is drawing much attention. The President has determined such competition is in the national interest as long as the restrictions are imposed to protect Intelsat. How might the U.S. determine the threshold for economic harm and how could the FCC specify the criteria for establishing econoic harm?

Answer. The Commission has not yet completed its analysis of the potential economic impact of the proposed systems on Intelsat. In the present rulemaking, the Commission has requested comments as to the approriate criteria for determining whether an alternative satellite system would cause economic harm to Intelsat and for measuring the degree of harm. In this regard, we have requested data and information on the types of services, capacity, anticipated demand, and anticipated pricing structures of the proposed satellite systems, and detailed analysis of the potential traffic diversion and revenue impact of these systems. In addition, the Commission has requested parties to address the degree of harm which consitutes "significant" harm under Article XIV(d). In particular, we asked parties to focus on the language, intent, and drafting history of Article XIV, on previous Intelsat coordinations under Article XIV, and on technological or structural developments in the satellite industry and services market which may bear on this issue. Finally, the Commission has invited comments on the restrictions set forth by the Departments of State and Commerce pursuant to the President's determination. In particular, we have asked whether and to what extent the restrictions could be implemented, the need for the restrictions, and the effect of the restrictions on the competitive viability of the propsed systems and Intelsat. Until the Commission has reviewed the information requested in its rulemaking, we will not be in a position to determine the potential impact of the proposed systems on Intelsat and, therefore, at this time cannot specify the criteria for determining economic harm nor the threshold for such harm.

Question. You've seen my lastest letter asking for a special look at libraries. With my 27 colleagues who cosigned that letter, I'm concerned about the impact of the private line tariffs on libraries which are publicly funded institutions operating on fixed budgets and serving as the gateway to information access for many people. Why are you resisting the exploration of a special library private line service?

Answer. The requests for a "special service," in effect, amount to preferential rate treatment for a particular group of customers. Such preferential treatment may raise questions of unlawful discrimination under the Communications Act. Further, if libraries were to be provided service at rates insufficient to cover the cost of providing it, the revenue shorfall would have to be borne by the general public, some other group of communications users, or by the common carrier providing service. This would conflict with the general principle that costs should be borne by cost causers.

The complex multipoint circuits used by libraries and other customers, such as news services, involve a disproportionate number of local circuits compared to other circuit configurations. The cost of such arrangements has traditionally been averaged with other types of circuits, so that other customers groups have, in effect, subsidized the library charges for years. We are not, therefore, persuaded that the public interest mandates preferential treatment for libraries.

Question. Have you sufficiently aired this issue for public comment?

Answer. The rate increases complained of arise primarily from the Commission's special access proceeding, rather than AT&T's recent filings. (AT&T's filings, in fact, would reduce rates for the AT&T-owned component of end-to-end services.) The special access filings have been under extensive investigation, entailing repeated public notices and decisions since the fall of 1983. The libraries have participated extensively in these proceedings. Thus, the libraries as well as all other users of special access services have in fact been on notice that substantial rate increases were likely since the fall of 1983.

Question. Are you indicating a legislative solution might be required? We are interested in legislation, but are not convinced it's necessary. You might be wise to be very sure of your legal ground before we change the existing Act.

Answer. If Congress were to determine that special treatment for library communication services is warranted, legislation to implement this treatment might well be necessary. We do not see the need for such action at this time.

Question. Will you reconsider instituting a rulemaking?

Answer. The Commission has no plans to institute a rulemaking directed solely at examining special access or private line rates of libraries in the immediate future.

QUESTIONS OF SENATOR HOLLINGS AND THE ANSWRS

Question. Last June, you visited Japan for a series of discussions with their Ministry of Posts and Telecommunications. Since then, the telecommunications trade dispute with Japan has grown greatly. What are your impressions of your discussions with MPT and the current trade dispute?

Answer. Our meetings with the Ministry of Posts and Telecommunications were cordial and businesslike. Since that time a number of events have occurred including: (1) the growth of the telecommunications trade deficit with Japan; (2) the passage of laws related to the privatization of Nippon Telegraph and Telephone Corporation; (3) the establishment of a new system for certifying telecommunications equipment in Japan; (4) and the continuation of U.S./Japanese trade negotiations on telecommunications trade issues. The Commission has followed these events with interest. We have also provided technical assistance to the U.S. trade representatives on various communications and regulatory issues. It would be inappropriate for us to speculate on the final resolution of these negotiations at this time.

Question. Do we have similar telecommunications trade problems with other countries (please give examples)?

Answer. The Commission does not collect data on the level of imports or exports in telecommunications equipment. In our examination of trade-related problems, the Commission uses public information made available by executive branch agencies with substantial trade responsibilities, such as the U.S. Department of Commerce. Based on the data which we have seen, the U.S. does have trade imbalances in telecommunications equipment with a number of other countries, although the trade deficit with Japan appears to be the largest.

Question. What role does the FCC have in the area of telecommunications trade?

Answer. The Commission does not have basic responsibility for trade matters, and we have not reflected trade considerations in our rules. We have, however, provided technical assistance on telecommunications trade matters both to members of Congress and their staffs and to the executive branch agencies involved in international trade matters.

Question. Should the FCC act in this area without a Presidential directive?

Answer. U.S. government authority and expertise concerning trade matters is located in the executive and legislative branches, and we would expect trade decisions to be made by those entities. Although the Commission is available to provide assistance to the executive and legislative branches on technical and regulatory issues involving communications, we would act on international trade matters only to an extent consistent with our responsibilities under the Communications Act. Were the

Commission to reflect international trade concerns in its rules, we would look to the expert executive branch agencies and the Congress for direction on the applicable trade issues.

Question. Does the FCC need additional authority?

Answer. The Commission is studying whether it has authority under the Communications Act and applicable trade laws to incorporate trade reciprocity standards into the Commission's rules. The Commission recognizes, however, that it does not have basic responsibility for trade matters and is not seeking to enlarge its mandate.

Question. There has been concern about whether international common carriers newly authorized by the FCC can land overseas. How successful have these carriers been and what foreign nations have been most helpful and what ones most reluctant?

Answer. New U.S. entrants have traditionally experienced difficulty in obtaining operating agreements with foreign administrations. However, it appears that new U.S. entrants are becoming more successful in obtaining these agreements. The Commission has recently authorized a number of U.S. carriers to begin service to various international points. Attached is a table showing recent Commission Section 214 authorizations and indicating whether the carrier has obtained an operating agreement with the foreign administration. It has been Commission policy to grant Section 214 authorizations without requiring the applicant to first obtain an operating agreement, because the applicant may be better able to negotiate with the administration with an authorization already in hand.

	Argo	GTE Sprint	Instafax	IRI	Isacom	MCI	Net Exp.	SBS
Australia		A/0				A/0	A	
Bahrain							A	
Belgium						A/0	A	A/0
Brazil						A	A	
Canada		A/0				A/0	A	A/0
France	A					A/0	A	A
Federal Republic of Germany							A	
Greece						A/0		
Hong Kong			A/0				A	A/0
Italy							A	A/0
Japan							A	A/0
Korea							A	
Mexico							A	A
The Netherlands							A	A/0
Philippines							A	
Saudia Arabia						A/0	A	
Spain	A							
Singapore						A/0	A	
Switzerland						A		A
Tawain							A	
United Kingdom	A	A/0		A/0	A/0	A	A	A/0
Venezuela							A	

A=Carrier has Commission authorization to provide service to that country. All Commission authorizations have been granted since December of 1983, except for the initial authorizations of IRI, in 1980, and SBS, in 1982, to provide service to the United Kingdom.

0=Carrier has obtained an operating agreement with the foreign administration of that country

Question. The FCC recently approved the application of Tel-Optik to build a cable between the U.S. and England. This application was filed last fall. At the same time, the alternative international satellite applications have languished for over two years. I well understand that the legal requirements underlying these applications differ, and that the FCC needed to wait for the Administration's opinion in the satellite area. But, in light of the fact that the fundamental policy issue is similar enough, why must the Commission take so long to act on the satellite applications?

Answer. On April 6, 1983, pursuant to the filing of the first application for a separate satellite system, the Departments of State and Commerce sent a joint letter to the Commission requesting that the Commission refrain from any final action on the application until such time as an executive branch group could review and study the application's impact on the national interest and foreign policy of the United States. Subsequent to the filing of the second application, the Department of

Commerce sent a letter to the Commission which again requested that the Commission not take any action on the applications. On November 28, 1984, President Reagan signed a presidential determination that alternative satellite systems were "required in the national interest", and the Department of State and Commerce informed the Commission of the criteria necessary to ensure that the United States meets its international obligations and to further U.S. telecommunications and foreign policy interest. One month after the President's determination on December 19, 1984, the Commission adopted a Notice of Inquiry and Proposed Rulemaking concerning the applications in order to elicit data and analyses regarding the possible effects of establishing the proposed satellite systems. The Commission will develop its policy guidelines for regulatory consideration of the applications based on the comments obtained in the proceeding. The current procedure schedule in Docket No. 84-1299 should provide adequate time for interested parties to prepare comments, and we do not contemplate any further regulatory delays. Once the comment period is completed, the Commission will proceed as expeditiously as possible based on the record established in the docket.

Question. There is much concern about the ability of Intelsat to cross-subsidize its competitive services. How does the FCC plan to ensure that regulated ratepayers and competitors are not harmed by such cross-subsidization? Does the FCC need additional authority in this area?

Answer. The Commission has not completed its analysis of the potential economic impact of the proposed systems on Intelsat or Intelsat's potential competitive responses to these systems. In the Notice, the Commission has requested comments on whether the introduction of these systems would induce Intelsat to price discriminate between geographic markets where competition occurs and those markets where competition is not anticipated. We also ask whether the restrictions set forth by the Departments of State and Commerce would give Intelsat an incentive to price discriminate between circuits leased for non-switched services and those leased for switched services. Until we receive the information requested in the Notice, we will not be in a position to determine whether Intelsat will cross-subsidize, the potential effect on the ratepayer and competitors, or methods to ensure the ratepayers and competitors are not harmed. In addition, the Commission has sufficient authority and expertise to look at this issue within the context of developing a policy for regulatory consideration of the applications, and therefore at this time does not require additional authority.

Question. Various small business interests have claimed that the access charge decision treats them unfairly. Has the FCC evaluated the affects of imposing the customer access line charge on small businesses with more than one line but less than four? Which and how many small businesses are harmed and are helped? What is the FCC's response to the report of the House Small Business Committee's Telephone Task Force?

Answer. The Common Carrier Bureau analyzed the impact of subscriber line charges on both residential and small business customers in MTS and WATS Market Structure; Further Report on the Effects of Federal Decisions on Universal Telephone Service, CC Docket No. 78-72, Phase IV, FCC 84-636, released January 4, 1985. In addition, the Commission issued an Order Inviting Comments in MTS and WATS Market Structure, CC Docket No. 78-72, CC 1796, released January 9, 1985, requesting comments on the Bureau's study as well as additional information. An order addressing the request for additional relief for small business is expected to be released shortly. The Bureau report found that in the long run, all small businesses will be helped by implementation of the access charge plan. In the short term, some small businesses will experience a slight increase in their total phone bill—generally less than four percent. According to a study performed by Bell Communications Research, roughly one half of all small businesses will experience long distance savings that exceed end user charges. The study looked at small business groups classified both by number of employees and SIC code, and found the following percentages of small businesses that would receive a net savings: Employees per firm/percentage of firms receiving a net savings—0-9, 46%; 10-19; 58%; 20-49, 66%; 50-99, 67%; and 100-499, 71%. Type of Business/percentage of firms receiving a net savings—Agriculture, Forestry and Fishing, 50%; Mining, 75%; Construction, 46%; Manufacturing, 62%; Transportation, 57%; Wholesale Trade, 67%; Retail Trade, 39%; Finance, Insurance and Real Estate, 52%; Services, 44%; Government Offices, 67%. The Bureau is currently preparing a response to the report of the House Small Business Committee's Telephone Task Force which will be provided to the Small Business Committee and any interested parties in the near future. We will provide you a copy when that report becomes available.

Question. The Commission began a lifeline program, albeit a limited one, as part of the access charge decision. The Commission is also studying this issue further. When do you plan to conclude your investigation? What options do you have for keeping the poor on the telephone network?

Answer. The Commission has directed the Joint Board to request comments concerning issues related to implementation of further lifeline assistance measures by March 31, 1985. The Joint Board's request for comments was released March 29, 1985. The Joint Board is to complete preparation of its recommendations on these issues within 180 days of instituting this proceeding.

The measures under consideration in this proceeding would be in addition to existing measures designed to preserve universal telephone service. These include provisions to allow the equivalent of a waiver of subscriber line charges for low-income households as well as provisions that help to keep local exchange rates lower than they otherwise would be in areas where the cost of providing telephone service is unusually high.

We are confident that sound, cost-effective measures for dealing with the need for lifeline telephone service can be developed through the Joint Board process over the next six months in cooperation with state regulators, the industry and Congress.

Question. I commend the FCC on its recent bypass study, particularly in contrast to its original superficial examination of this issue. It appears from this study that the major uneconomic bypass concern is the private line haul from the user's office to the interexchange carrier's point of presence. Is this correct, and how does the FCC plan to address this problem?

Answer. We believe that our recent study of bypass is the most careful and comprehensive study of the issue and we appreciate you commendation. Your are correct in your understanding that the major form of bypass, at least in the near future, will most likely consist of links between user locations and the points of presence of interexchange carriers. The establishment of such links allows users to avoid high usage related toll costs without constructing and operating complete bypass systems. In many cases, such links can be established simply by leasing private lines from the local telephone company.

So long as the charges for switched access force high volume toll users to pay substantially more than the cost of direct connection to the local network, they will have incentives to bypass the existing telephone network. The serious nature of the bypass threat was one of the major reasons why the Commission adopted a system of limited subcriber line charges for residential and single line business customers as well as provisions for alternative tariffs for the recovery of carrier common line costs designed to reflect volume discounts or other creative anti-bypass revenue recovery mechanisms. We are hopeful that creative use of the alternative tariff mechanism will reduce the possible need for increased subscriber line charge levels in the future.

Question. There are a host of outstanding issues concerning access charge policy and related tariffs. Please submit a list of all pending and expected proceedings and tariffs, the issues involved, and the expected completion date.

Answer. The following proceedings relating to access charge policy are pending in the Policy and the Industry Analysis Divisions:

1. Subscriber line charges for small business.

Issue. Should the application of subscriber line charges to small business subscribers be revised?

Timing. Commission action is expected early this summer.

2. Measures to assist low-income households in affording telephone service.

Issue. What additional measures should be adopted to assist low-income households in affording telephone service?

Timing. A Joint Board recommendation is expected by the end of September with a Commission decision expected later in the year.

3. Alternative tariffs for recovery of carrier common line costs.

Issue. Whether the 35 cents surcharge authorized to fund any revenue shortfalls created by alternative tariffs should be increased?

Timing. Proceedings concerning this issue are expected to be instituted in late 1985 or early 1986.

4. Subscriber line charges.

Issue. How effective have limited subscriber line charges and alternative tariffs been in achieving the Commission's basic goals in the MTS and WATS Market Structure proceeding.

Timing. Proceedings concerning this issue are scheduled to be instituted in late 1986.

5. Billing and collection of access charges.

Issue. Should the Commission modify its rules for the billing and collection of carrier common line charges by the National Exchange Carrier Association (NECA) to permit exchange carriers to perform these functions?

Timing. A final Commission order is expected before the end of the calendar year.

6. Average schedule companies.

Issue. Should exchange carriers be required to elect cost study or average schedule treatment for all functions and/or affiliates, or should exchange carriers be permitted to elect cost treatment for some functions or affiliates and average schedule treatment for others?

Timing. Comments are due on April 29, 1985, with reply comments due thirty days thereafter. The time-frame for Commission action is under review.

7. Local Transport charges.

Issue. Should the Commission modify or retain those sections of its access charge rules that pertain to the computation of local transport charges? (A waiver from the local transport sections of the Commission's rules has been granted pending further order.)

Timing. Comments on this issue are due on April 29, 1985, with reply comments due thirty days thereafter. The time-frame for Commission action is under review.

8. Private line surcharge.

Issue. Should the Commission modify or eliminate the private line surcharge which is designed to address "leakage" of traffic onto the switched network through private branch exchanges ("leaky" PBXs)?

Timing. Comments on this issue are to be filed on April 29, 1985, with reply comments due thirty days thereafter. The time-frame for Commission action is under review.

Question. There are a host of outstanding issues concerning access charge and policy related tariffs. Please submit a list of all pending and expected proceedings and tariffs and other matters relating to access charge policy, the issues involved, and the expected completion date.

Answer. The following major proceedings relating to access charge policy are pending in the Tariff Division:

1. Petition for Reconsideration of Special Access Order of November 9, 1984.

Issue. Whether the Commission's abrogation of the Docket No. 20099 Settlement Agreement was appropriate.

Timing. Commission action is expected by mid 1985.

2. CC Docket No. 83-1145 inquiry regarding allocation of default traffic.

Issue. Whether it is an unreasonable practice under Section 201(b) of the Communications Act for carriers to route all "default" traffic to one particular interexchange carrier.

Timing. Commission action is expected by mid 1985.

3. AT&T Communications's proposed PRO America optional calling plan.

Issue. Whether the proposed offering is priced below cost and is, therefore, predatory or anti-competitive.

Timing. May 1985.

4. Equal Access and Network Reconfiguration (EANR) tariffs and investigation.

Issue. The Commission must determine the appropriate separations treatment for equal access costs, once the Federal-State Joint Board has made its recommendation, and must decide certain cost and rate structure related issues regarding NYNEX and Bell Atlantic EANR tariffs.

Timing. Commission action is expected by mid 1985.

5. BOC Petition regarding Equal Access Transition.

Issue. The Commission must consider whether to adopt the interim formula that is currently in effect for determining premium versus non-premium access charges in areas where some or all usage either cannot be measured at all, or is not measurable on an end office specific basis.

Timing. Commission action is expected by mid 1985.

6. Special Access Tariffs investigation.

Issues. Whether the rate levels and rate structures contained in the special access tariffs filed by NECA and the LECs are just and reasonable. Issues in this investigation include, for example, whether the rate structure for video service is reasonable; whether the costs of individual components of special access service are properly allocated between the rate elements in the special access tariffs; and whether special access rates are higher than those required to produce a fair rate of return for the LECs.

Timing. Commission Action is expected by the end of calendar year 1985.

7. Request for clarification of the application of access charges to interstate, intraLATA services and corridor services.

Issue. These requests seek clarification of the application of switched access charges to interstate, intraLATA services and corridor services.

Timing. Commission action is expected by April 1985.

8. AT&T Communication's proposed Private Line Tariffs (Tariffs 9, 10 and 11).

Issues. The issues raised by these proposed tariffs include, among others:

Whether AT&T's bifurcation of its rate structure improperly encourages bypass of the local exchange carriers;

Whether the cost support submitted justifies the newly developed rate elements reflecting LEC bridging when involved in providing multipoint circuits;

Whether some form of a "phase-in" or rate increases should be granted;

Whether substantial increases imposed on the interoffice channels used by television services are justified;

Whether the major rate increases proposed for multipoint customers such as libraries and press services are justified;

Whether the various rate elements proposed to implement the AT&T-assembled and LEC-based alternative service configurations are properly structured;

Timing. Commission action is expected in April 1985.

9. In addition, the Commission received, on March 15, 1985, tariff filings from the local exchange carriers implementing the $1 customer access line charge and reducing the carrier common line charge accordingly. A filing by AT&T revising its tariffs to pass through the carrier common line reduction is expected on April 15, 1985. We anticipate an approximate 5 percent decrease in long distance rates. We expect our review of that filing to be completed by May 30, 1985. Finally, the local exchange companies' 1985 access charge tariff filings are expected on July 2, 1985. These filings will be made on 90 days' notice, to become effective October 1, 1985. We have before us a number of petitions for waiver of Commission rules and orders which relate the July 2 tariff filings.

Question. The FCC is now evaluating the issue of "equal access" and default traffic. There are, in addition, many other issues involving the "equal access" process, for example, concerning the pace of converting local offices and making tandem switches available. In light of the importance of "equal access", does the Commission have plans to investigate further all aspects of the "equal access" process?

Answer. The Commission is aware of the concerns regarding implementation of equal access voiced by certain of the interexchange carriers. One of the primary issues in this regard is the routing of default traffic—the interstate toll traffic generated by subscribers who did not make an affirmative selection of an interexchange carrier during the pre-subscription process. At present, most of the exchange carriers route all default traffic to AT&T. However, Northwestern Bell has implemented a plan for pro-rata assignment among the interexchange carriers of customers who fail to designate an interexchange carrier.

The Commission recently raised questions concerning the lawfulness of routing all default traffic to a single interexchange carrier, and we have instituted proceedings to consider changes in the treatment of default traffic. Comments concerning this matter are due April 4, 1985, and replies are due April 15, 1985.

The Commission has also approved a proposal for a forum approach, suggested by the Exchange Carrier Standards Association (ECSA), designed to achieve voluntary resolution of problems related to the implementation of equal access. The ECSA proposal provides a mechanism for resolution of disputes between exchange carriers and interexchange carriers involving issues of general industry concern, when these matters cannot be resolved in one-on-one negotiations. Meetings of the committee (composed of exchange carrier, interexchange carrier, and user representatives) that will administer the dispute-resolution process have already begun. We are monitoring this process to ensure that it facilitates the implementation of equal access. The complaint process provided for in Section 208 of the Communications Act is also available if voluntary resolution of a particular question cannot be achieved.

It appears that a decision concerning the allocation of default traffic, combined with the forum process for dispute resolution, should allow a reasonably smooth transition period for the implementation of equal access. We are presently monitoring the conversion to equal access in order to determine what, if any, problems are developing. If future developments demonstrate the need for further Commission action in this area, we will take whatever steps are appropriate to ensure that equal access is implemented in a timely and even-handed manner.

Question. While the FCC has permitted interstate long distance competition, many states have been reluctant to follow this open entry policy for intrastate service. Please submit a list of what states: a. have authorized new entrants for interlata intrastate service; b. have authorized new entrants for intralata service; c. provide authorized OCC's with local access at a "discount" for unequal access similar to that ordered by the FCC; d. have passed or have pending legislation concerning new entry and deregulation. (In supplying this list, please be as specific as possible about the details of any authorization, regulation, or legislation.) How does the status of new entry into the intrastate market affect the overall issue of long distance competition? What, if anything, should be done to increase new entry within states?

Answer. The following states have authorized new entrants for inter-LATA intrastate service: Alabama, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massaschusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Virginia, Washington, West Virginia, Wisconsin. The following states have authorized new entrants for intra-LATA service: Delaware, Florida, Iowa, Maryland, New York, Ohio, Texas, Washington. The following states provide authorized OCC's with local access at a discount for unequal access similar to that ordered by the FCC: Alabama (35%), California (5%), Colorado (28%), Florida (35%), Georgia (23%), Indiana (55%), Kentucky (55%), Louisiana (2-3%), Maryland (18%), New Jersey (55%), New York (23%), North Carolina (25%), Ohio (55%), Pennsylvania (19%), South Carolina (35%), Virginia (18%), West Virginia (18%), Wisconsin (55%). The FCC does not systematically monitor legislation in the states. However, according to a recently reported study by NARUC, the following states have passed or have pending legislation affecting inter-LATA intrastate competition: Arizona (also intra-LATA), Colorado, Florida (also intra-LATA), Illinois, Mississippi, Nebraska, North Carolina and Virginia. There may be some interrelationship between intrastate entry and long distance competition insofar as customers may be disinclined to presubscribe to an OCC if that OCC cannot meet all of the customer's long distance needs. On the other hand, the ease with which a customer can access a carrier different from this designed carrier (by simply dialing an extra 4 digits), combined with the fact that the majority of states allow competition (either facilities based or resale), provides support for the argument that states' decisions will not have a material effect on the development of intrastate competition. While the Commission intends to monitor the development of competition (including the effects of intrastate entry), we have no present intent to interfere with the states' determination of whether or not to allow intrastate competition.

Question. The FCC is proposing substantial changes to the USOA. What benefits will these changes bring? Will these proposed changes help determine the costs of providing service?

Answer. Our proposed USOA should provide an accounting system which would meet the financial and primary fiduciary reporting needs of the telephone industry. It will also provide the body of financial data to which appropriate methodologies could be applied to develop the requisite information to satisfy both our regulatory needs and the carrier's managerial needs. The revised USOA should give the flexibility to accommodate diverse uses, and should be able to readily respond to and accommodate technological and competitive advances in the industry, permitting easy revisions of the system to reflect such changes with minimal need to reallocate account balances. The revised USOA should provide us with the benefit of having a system which will support and compliment parallel subsystems for separations and costing needed for the Commission to maintain its responsibility to regulate carrier rates in the public interest.

The proposed USOA should provide us with a far more flexible and informative basis for identifying and developing improved costing procedures than does the existing uniform system of accounts. The proposed USOA, in addition to portraying in precise functional and technological terms the actual business of providing telephone services, breaks costs down into more discrete and analytical elements. For example, in the plant accounts, we proposed that these accounts be disaggregated from the current 20 broad categories to 41 technology-specific accounts grouped among meaningful functions. In addition, we propose a subsidiary record category requirement where in carriers would be required to establish cost elements within the accounts such that these data would be readily available for reporting. The proposed USOA recognizes the current environment of the telephone industry and possesses the flexibility to accommodate readily any changes in the nature of that environment and in the technology that drives it.

Question. Will the FCC ever be able to develop a system for determining accurately the cost of service? If not, what will the Commission rely on to prevent monopoly services from subsidizing competitive ventures?

Answer. Costing of services and products, especially in an industry like telecommunications where there is a great deal of shared or joint costs, is not an exact science. Good management and well designed accounting and data collection systems, however, can substantially can favorably affect the accuracy of service costing. This, of course, is the underlying reason for the development of the new Uniform System of Accounts (USOA).

It is our tentative view that the proposed system of accounts currently out for comments from the industry and from the public portrays in precise functional and technological terms the actual business of providing telephone services and breaks costs down into more discrete and analytical elements. As a result, the proposed system of accounts should be a large step toward providing the Commission with a highly flexible and informative basis to proceed with the identification and development of improved costing procedures.

The Commission perceives the new USOA as only one part of the costing process. It is the system necessary to provide the financial data for separate, parallel subsystems to derive realistic and representative cost allocations among the various jurisdictions and telephone services. We have taken initial steps to revise the requirements of the parallel subsystems as well. The changes will require not only improved costing methodologies but any additional statistical data needed in the costing process. We expect that the changes finally developed will provide the refinements in the information produced through these parallel systems to provide for better cost determinations. The Commission expects, therefore, that these systems in combination will provide the necessary data base to accomplish its regulatory responsibilities with respect to a fair and accurate determination of service costs.

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

Question. Your proposed schedule of charges expressly exempts payment by governmental bodies. No such exemption appears to be proposed for non-profit or educational institutions.

Does the Commission intend to utilize its proposed authority to waive or delay payment to accommodate such interests and institutions? And if so, what criteria will the Commission apply in determining when such a waiver will be in the public's interest?

Answer. The Commission does not intend to charge a fee to educational institutions or certain non-profit organizational users.

When determining when an exemption will be granted, the Commission proposes to use the criteria established by the Internal Revenue Service for determining a non-profit organization. This type of organization is generally described as one organized and operated exclusively for religious, charitable, scientific, public safety or educational purposes. 26 CFR 501(c)(3)

QUESTIONS OF SENATOR FORD AND THE ANSWERS

Question. Why must applications for television translators compete with the new commercial "low power television" local station applications for channels in lotteries? Many of our citizens get their only television service via television translators and these translators are especially cost-effective means for public television stations to extend their service to rural areas and smaller communities.

I understand that the FCC lottery has greatly slowed down the processing of applications and that, even when processed, translator applications are merely lumped together with "low power" applications, with the translator applications frequently losing due to the preference system the FCC operates. Can't something be done to free these translator applications?

Answer. Report and Order, MM Docket No. 83-1350, the Commission determined that it would be in the public interest to maintain the present balance between the goals of maintaining the television translator service and encouraging new low power service. Therefore, no processing priorities are accorded to television translators.

Specifically, as stated on the above-referenced docket, based on our experience and the comments received in the rule making, the public interest will best be served by the expeditious processing of all applications and not by choosing one group of applicants to favor over another. We have not been persuaded that expedited processing of television translator applications must come at the expense of providing maximum flexibility for existing television translator stations that want to switch to low power television status and new low power television stations, that can provide a local programming outlet beyond the capability of a television translator.

Under the Commission's rules, a low power television station may operate as a television translator, rebroadcasting the programming of a full-service television station. (The basic distinction between low power television and television translator stations is that television translators are limited to rebroadcasting the signals of full-service television stations and cannot do more than 30 seconds of local origination programming per hour. Low power television stations may carry any type of broadcast programming and do any amount of local origination programming.) Thus, any attempt to give a processing priority to television translators should take into consideration all the low power television applicants that propose to operate as television translators. A provision would have to be made for giving the same priority to these low power television applicants. New restrictions on programming changes for low power television and television translator stations would be necessary to maintain the integrity of this television translator priority. Significantly, restrictions on switching from television translator to low power television status would unduly penalize television translators that desire to do small amounts of local origination programming. The low power television service was initially designed to allow existing translators to provide some local origination programming. This flexibility is still a valid goal and should not be restricted. Since low power television licensees may operate as translators and also originate programming, hybrid systems have become a popular method of operation. Low power television stations are operating as translators for a good part of the time, with the institution of some local orioginatin programming as appropriate for a particular area. Despite the fact that low power television stations are commonly thought of as stations that engage in continuous program origination, many communities, particularly the smaller ones, lack the resources to sustain such a station. However, some of these communities may desire local programming on a limited scale. Local news, sports events and public affairs programs are now carried on an occasional basis by low power television stations that were previously strictly limited to rebroadcasting by the Commission's television translator rules. The elimination of this flexibility, which would be required by priority processing, would be destructive to the further development of these hybrid stations. In addition, relaxation of the origination requirements has permitted former exclusively translator operations to convert to low power television and to establish an economic base in a particular community by selling advertising time. The income so generated is used to finance the translator portion of the operation. Thus, a priority for translators may be short sighted. Low power television as a broadcast service is in its infancy and should be given an opportunity to develop without further restrictions.

In any event, the primary complaint of those parties advocating a priority for television translators is that processing in combination with low power television applications has caused delays in the granting of television translator applications. The recent rule changes, particularly the use of window filing periods, will substantially reduce the processing time for television translator applications without providing a specific priority for such applications. The use of windows will eliminate the practice of overfiling competing applications on television translator applications. With fewer mutually exclusive situations, the applications which are filed may be processed more expeditiously. Therefore, we believe that expeditious action on television translator applications may be provided without the need to designate television translator applications as a priority.

Pursuant to specific instructions from Congress, the Commission implemented its system of random selections or lotteries to choose licensees from among certain competing applications. In the authorizing legislation, Congress required that minority and diversity preferences be given to certain applicants. Both television translator and low power television applicants are awarded preferences on the same basis.

Question. Some statements coming out of the FCC might be characterized as falling into the "it's a cruel world" category. The jest of them seems to be that the competitive market place was never guaranteed to be a friendly place, and there will likely be many communications company failures in the final accounting.

I don't want to mince words about who has said what and when. Let's just presume that in your responsibilities, the FCC has in fact forced itself to look into several possible outcomes in the competitive telecommunications market. One conceivable outcome is that there will be no survivors other than the group that was there in the first place, the AT&T-Bell network.

If you or your staff have projected a future market where there are no survivors other than the the AT&T-Bell network, I would like to know what judgment you have come to as to how the telephone consumer fares in such a situation. If you haven't undertaken any specific inquiry in this regard, I still would like your comments on how the telephone consumer is likely to fare in a situation where only the Bell Companies and AT&T are present to provide service, and they are present in an unregulated fashion.

Answer. The Commission's initial decision authorizing interexchange service competition was intended to limit such competition to the provision of private line services. However, in the *Execunet* case, the D.C. Circuit Court of Appeals held that the Commission could not limit the other common carriers (OCCs) to the provision of private line services absent a finding that the competitive provision of MTS/WATS like switched toll services by these carriers would be contrary to the public interest. The Commission subsequently instituted the MTS and WATS Market Structure proceeding to examine this question. Almost all of the major industry participants in this proceeding (including AT&T) concluded that the OCCs should be allowed to provide MTS-WATS like services.

While we have authorized competitive entry in this area, we can not guarantee financial success. The Commission has authorized numerous transitional measures, such as the access charge discount, to reflect the unequal access which the OCCs have received in the past. As the impediments to full and fair competition are eliminated, these transitional measures must be phased out.

It is entirely possible that some of today's competitive entrants will no longer be in the MTS/WATS market five or ten years from now. Such a "shake-down" period is not unusual in new markets, and we believe that predictions that the collapse of competition in this market is immenent are not credible. In the unlikely event that the hypothetical situation which you pose actually comes to pass with AT&T and the BOCs as the only providers of MTS/WATS type services, unregulated provision of these services would not appear to be appropriate.

Question. Last year was widely reported to be a disappointing year for AT&T because it only produced a profit amounting to a 10% rate of return. In light of its recent competitive initiatives such as "Reach Out America" and "PRO America," how can AT&T improve its profitability by further cutting the rates of its primary product? How do new companies get started and grow in a market where the old monopoly participant is permitted by the FCC to offer its services at below cost?

Answer. We recognize that this is a critical time in terms of the development of competition in the interstate telephone market. As equal access conversions rapidly take place, carriers must come up with innovative ways to attract customers during the presubscription process. Indeed, this is precisely why we see AT&T seeking to offer services such as "Reach Out America" and "PRO America" at the present time. At the same time, however, the Commission is fully aware of its responsibility to ensure that such competitive initiatives do not prevent fair competition.

In our examination of "Reach Out America," we found that any disparity between proposed prices and AT&T's access costs is mainly attributable to the fact that access charge rate schedules are not structured on a peak/off-peak basis. This anomaly is presently under investigation. Moreover, we found that the proposed prices approximated an average rate under AT&T's current night/weekend rate schedule. As the Reach Out America Order noted, if the present access charge price structure were to be used as; an inflexible benchmark for determining the reasonableness of AT&T's rates, many of AT&T's current MTS and WATS rates might be considered unlawful. As to the reasonableness of "PRO America," it would not be appropriate for us to comment since it is still under consideration.

In any event, our recent experience with such optional calling plans has brought to light the need to overhaul our rigid pricing standards. Innovative rate structures and flexible pricing plans benefit the public by being more responsive to customer needs. That is why we have instituted a proceeding to establish more flexible guidelines for judging optional calling plans. *Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans,* CC Docket No. 84-1235, FCC 84-564, (released Jan. 9, 1985). Our objective there is to determine how the Commission can most effectively guard against the exercise of market power by AT&T without unduly impeding strenuous price competition. One of the suggested guidelines addresses the issue of below-cost pricing. Pricing flexibility would allow carriers to develop offerings that stimulate demand, increase net MTS revenues and promote the efficient use of facilities.

Question. There is a process underway which is generally called "Equal Access." The result is supposed to be that any company which wants to provide long distance telephone service in the competitive market will have exactly the same opportunity to do so as AT&T. The establishment of this equality of opportunity translates into a lot of technical considerations, as well as a lot of cost considerations. We are told that at the point when all the proper technical additions and adjustments are made—at the point when a person can pick up his telephone and dial his long distance call through an MCI, Sprint or SBS in the same way that you now dial AT&T—at that point we will have achieved equal access. When that happens, every long distance telephone company will pay exactly the same amount to the local exchange company to complete a call. How is the process working so far? Is it proceeding as expected? Are there any particular problem areas?

Answer. In requiring AT&T to divest the Bell Operating Companies (BOCs) the Modification of Final Judgment ("MFJ") in *United States* v. *American Telephone and Telegraph Company* established constraints and obligations on the subsequent activities of AT&T and the divested BOCs. The most important of these provisions in terms of interconnection for the provision of interstate and foreign services is a requirement that each BOC: provide to all interexchange carriers and information service providers exchange access, and exchange services for such access on an unbundled tariff basis, that is equal in type, quality, and price to that provided to AT&T and its affiliates.

Appendix B of the MFJ acknowledges that equal treatment of access will have to be phased in during 1984-1986, and even thereafter in the case of smaller, older central offices upon an appropriate showing to the court. The MFJ provided that "[n]o later than September 1, 1985, such equal access shall be offered through end offices of each BOC serving at least one-third of that BOC's exchange access lines and, upon bona fide request, every end office shall offer such access by September 1, 1986."

The Commission's Section 214 Divestiture Order was conditioned, among other things, upon the regional holding companies submitting semi-annual reports on the progress made in providing equal access, including an analysis of the number, location, and type of offices from which equal interconnection is available. The first reports were filed on March 1, 1985, and cover the period from July 1, 1984, through December 31, 1984. As of December 31, 1984, a total of approximately 125 offices were offering equal access. In several instances separate figures were not provided for the number of access lines in those offices from which equal access is available, but the offices involved are estimated to serve, in total, over 3,000,000 access lines. Implementation of equal access for this relatively small percentage of the total access lines served by the BOCs (estimated at 85-90,000,000 in the aggregate) is probably attributable to the fact that the data reflect year-end 1984 statistics, whereas 1985 and 1986 are the principal years in which equal access implementation is planned.

The BOC reports also describe, in varying degrees of detail, changes that have been made in their equal access plans. In large part these changes appears to involve advancement or postponement of equal access implementation dates at particular offices due to technical or cost considerations. None of the companies has sought any exceptions from the court with respect to equal access requirements although several companies indicated that they would make requests in the future.

The availability of equal access in those offices which are converted will place AT&T and the competing interexchange carriers on an equal footing insofar as subscriber access is concerned, *i.e.*, in those offices customers can presubscribe to the carrier of their choice operating at the location, and access that carrier without using a distinct access code. In addition, the customers can also reach any other participating long distance carrier by dialing a 5 digit code. (By contrast, in non-equal access offices, the customer must dial a separate 7 digit access code to reach an interexchange carrier other than AT&T and then dial a separate personal identification number.)

The Common Carrier Bureau's Industry Analysis Division has developed and is putting into place a monitoring system designed to track equal access implementation in terms of network access line conversions. The monitoring plan will require regular reports, on a company-by-company basis, of conversions effected as compared to those planned.

Other actions have been taken relative to the equal access implementation process. A primary concern of several of the competing interexchange carriers is treatment of default traffic—toll traffic generated by customers who have not selected an interexchange carrier in the pre-subscription process. At present, when a subscriber does not make an affirmative selection of a specific interexchange carrier, most of the BOCs route that subscriber's traffic to AT&T. However, Northwestern Bell has implemented a plan for apportioning this traffic among the carriers involved. The plan gives customers two opportunities to select a long distance company of their choice. After that time non-responding customers are assigned randomly to a qualified long distance company in proportion to those who did make a selection. Mountain Bell and Pacific Northwest Bell are expected to implement a similar plan in the near future. The Commission presently has proceedings underway to consider changes in the treatment of default traffic.

An industry forum has also been established to achieve voluntary resolution of problems related to equal access implementation. A committee, consisting of exchange carrier, interexchange carrier, and user representatives will administer the process, which is intended to achieve voluntary resolution of disputes involving issues of general industry concern when the problems cannot be resolved by one-on-one negotiations. This forum should provide for satisfactory resolution of most problems; if it cannot be achieved there, the complaint process provided for in Section 208 of the Communications Act is also available.

The Commission believes that a decision on the allocation of default traffic in conjunction with the forum process for dispute resolution should allow a reasonably smooth transition to the new equal access environment. We are presently monitoring conversion to equal access in order to determine what, if any, problems are developing. In future developments demonstrate the need for further Commission action in this area, we will take whatever steps are appropriate to ensure that equal access is implemented in a timely and even-handed manner.

Question. We have moved some distance from the events that caused the breakup of the AT&T monopoly. We have progressed through cycles of tariff filings, major decisions on access rates, and FCC decisions on the organizational make-up of AT&T.

At each of these junctures, there have been lively rounds of debate before the Commission through written filings and other presentations. We in Congress often fall within the sway of these rate and structural separation quesitons, and it seems to be that they have taken a pretty well defined pattern. AT&T files a proposed tariff or a new rate proposal, and virtually every other competitor to AT&T goes to considerable length to demonstrate that the AT&T filing is anti-competitive. In these rebuttals, there is often voluminous data, and tens—if not hundreds of pages—insisting that the Commission reject some of what has been requested by AT&T.

I am told that it has been some time since the Commission conducted a full-scale investigation and formal hearing on the effects of competition in the telecommunication market. I wonder what your thoughts are on the timely appropriateness of such an activity by the FCC. Are we not at the point when the Commission should sit back and publicly assess what has occurred in the competitive telecommunications market?

Answer. The FCC has been reviewing and acting on changes in the intercommunications market on an ongoing basis and in a number of different proceedings. The Commission in 1984 instituted a Notice of Inquiry into the long run regulation of AT&T's domestic, basic and interstate services. This Inquiry focuses on four areas: (1) costs and benefits of continuing the present regulatory scrutiny of AT&T through 1990; (2) possible options for reduced regulation of AT&T; (3) under what conditions we might pursue each option; and (4) how to assess AT&T's market power. While no specific report is currently planned on the record develped in this Inquiry, it will provide valuable information on the development of competition in the industry and it will help in formulating proposals to alter the regulation of AT&T during the transition to a competitve environment. It will also guide the Commission in analyzing questions of dominance/non-dominance and in collecting information relevant to developing optional regulation of AT&T. Specific deregulatory proposals, such as ATTIS Resale, will be initiated during this inquiry and should provide the Commission with an understanding of economic trends in the industry. Specific decisons on those trends will be made in other proceedings.

The Commission is currently examining regulations affecting dominant and non-dominant carriers alike. For example, the 1980 Computer II rules are being reassessed in light of the 1985 telecommunications environment. The Commission is also presently examining options for alternative MTS rates and rate structures of AT&T and other dominant carriers. In 1984 AT&T filed its Reach Out America tariff to offer an optional MTS service package under a different but overlapping rate structure, primarily for MTS night and weekend calling. The Commission is currently considering comments on recently proposed guidelines for the review of optional MTS offerings, such as AT&T's Reach Out America and its recent PRO-America filing.

Through the Competitive Carrier Rulemaking, the Commission has taken significant action to reduce unnecessary regulatory burdens on non-dominant carriers in the evolving interexchange telecommunications market. Carriers determined through this rulmaking to lack market power are no longer required to file tariffs or obtain Section 214 domestic facility authorization.

Question. It seems in the case of several of the major long distance competitors to AT&T that the further they progress down the path of equal access, the less fit they are to compete. There are numerous reports of a patch-quilt pattern of conversions of end offices in different exchange areas. There are failures to access tandem switches at an early point. There are increased costs to the new competitive companies because they are losing the benefit of reduced access charges, while at the same time they are paying for under-used trunk lines in the absence of tandem switches.

I see evidence of declining profits on the part of the competitors and even a recent projection that most of these companies are headed for two or more years of red ink as a result of the additonal costs created by "equal" access.

In light of this situation, it is difficult for me to understand why the Commission has recently approved record increases in special access costs to the long distance companies.

What effect do you feel these manifold cost increases are having on the companies that are attempting to join the competitive long distance market?

Answer. The Commission supports full and fair competition with a level playing field for all entrants. The Commission has implemented numerous transitional measures, including the OCC discount for switched access, to reflect the unequal access which the OCCs have received in the past. As these impediments are removed, the transitional measures must be phased out.

Discounted switched access charge rates for the OCCs cannot be justified for equal access traffic. As a result, the OCCs will pay the same switched access charge levels at AT&T for equal access traffic. The increased charges for OCC use of special access service also involve the phase-out of previous charges that did not cover the full cost of access service. Moreover, it is important to note, that the Commission's March 1, 1985, *Order* on special access, required a number of local exchange carriers to reduce their proposed special access rates by amounts ranging from 1 to 29 percent. Further, in order to give the OCSCs time to absorb these changes in the area of special access, the Commission has adopted a 12-month transition period for implementation of these rate increases.

While the Commision has authorized competitive entry in the MTS/WATS market, we can not guarantee financial success. As a result, it is possible that, at some point in the future, certain of the less efficient entrants will no longer be present in this market.

FAIRNESS DOCTRINE QUESTIONS

The following responds to the questions by Senators Goldwater and Packwood concerning the Commission's inquiry on the continued validity of the Fairness Doctrine:

On May 8, 1984, the Commission released a Notice of Inquiry that instituted a wide-ranging re-examination of all aspects of the Fairness Doctrine. The Fairness Doctrine, which has been in effect for over 30 years, requires broadcasters to cover controversial issues of public importance and to provide reasonable opportunities for the presentation of contrasting viewpoints.

Examining the statutory, constitutional, and policy implications underlying the Fairness Doctrine, the Notice questioned whether retention of the doctrine was necessary or appropriate in light of present marketplace conditions. The Notice also explored the Commission's authority to substantially modify or repeal the Fairness Doctrine absent specific statutory authorization in light of the requirements of Section 315 and the general public interest standard of the Communications Act of 1934, as amended.

The Notice of Inquiry also examined the question of whether the Fairness Doctrine is constitutionally mandated or even constitutionally permissible. Recognizing that as a content-based regulation, the Fairness Doctrine is an exception to the First Amendment's guarantees, the Notice inquired as to whether the doctrine is necessary to further the governmental interest in an informed electorate and suggested that in operation, it may have an impermissible "chilling" effect on the free expression of ideas. We expect that the Commission's conclusions in this area may be of particular use to the courts on this question. As Senator Packwood's question implies, we have taken note of the fact that the Supreme Court in the 1984 League of Women Voters case expressed some willingness to reconsider its view of the constitutionality of the Fairness Doctrine and we are interested in providing an adequate record for such a deliberation.

Numerous participants have submitted comments and reply comments on the issues raised by this inquiry. In addition, on February 7th and 8th of this year the Commission, en banc, heard oral presentations on these issues. The participants in these hearings included a wide variety of industry, academic, and public interest representatives.

The Commission has not yet issued a decision on this matter. However, it is our hope that the record we have built will better enable the Commission and/or Congress and the Courts to resolve the questions which the Notice of Inquiry has raised.

ITFS QUESTIONS

1. The following responds to questions of Senators Inouye, Ford and Goldwater relating to standards to be adopted in the ITFS rulemaking to ensure maximum use of the channels by local and bona fide educational entities:

The Commission presently has an outstanding rulemaking proceeding pending in the Instructional Television Fixed Service. Further Notice of Proposed Rulemaking in MM Docket No. 83-523, 49 Fed. Reg. 32610 (August 15, 1984). The proceeding was initiated because of a significant increase in the number of ITFS applications recently filed. The Commission noted that the interest in the spectrum was, in part, a result of the Commission's decision to permit the use of ITFS excess channel capacity for commerical purposes and that a large number of applications were submitted by nonlocal, national entities that were backed by commercial operators.

The Further Notice stated that while increased usage of ITFS spectrum is desirable, further consideration of certain aspects relating to the use of channel capacity for non-ITFS purposes matters, was necessary to assure the preservation and effective growth of the service. Comments were solicited on a number of matters, including eligibility requirements for becoming an ITFS licensee. This included matters pertaining to the bona fide educational nature of applicants (considering such things as accreditation, educational background and experience, history of educational service) and demonstrations by nonlocal applicants of local participation in the development and use of the educational programming on the proposed systems. Comments were also solicited on procedures and criteria for choosing among mutually exclusive applicants, with instructional programming for students, the amount of other types of ITFS programming proposed, and the local nature of the applicant listed as important criteria to be considered.

Numerous comments have been received and a Report and Order concluding the proceeding is expected to be considered by the Commission in the third quarter of this fiscal year.

FOUR CHANNEL LIMITATION

2. The following responds to questions of Senators Packwood, Ford, Danforth, and Goldwater relating to the retention of the four-channel limitation per licensee per area:

Section 74.902(d) of the Commission's Rules 47 C.F.R. §74.902(d), limits a licensee to the assignment of no more than four channels in a single area of operation. This limitation applies only to the particular area and certain state entities, *e.g.* South Carolina Educational Television Commission, have four-channel systems in numerous communities throughout the state.

In originally establishing the four-channel limitation, the Commission reasoned that such a limitation in a given area was necessary to assure a fair and equitable distribution of ITFS channels among several potential applicants. At one time the Commission considered relaxing the limitation, but recent actions permitting the leasing of ITFS excess channel capacity for non-ITFS use and removing a number of the technical restrictions placed on ITFS licensees have resulted in a significant increase in the demand for ITFS channels. Given the increased and increasing demand for channels, the diversity of services that can be provided by the greatest number of licensees in a given area, and the flexibility that four channels provides applicants in designing systems, the Commission has determined that retention of the four-channel limitation is justified. Report and Order in MM Docket 83-523, 49 Fed. Reg. 32590 (August 15, 1984), aff'd., Memorandum Opinion and Order, FCC 85-11, released January 15, 1985.

In deciding to retain the limitation, the Commission did note that licensees seeking more than four channels could request a waiver of the rule. The Commission stated that the waiver burden would be high, particularly in areas where a large demand for channels existed, but that it would consider factors such as how the additional channels would be used for ITFS purposes and whether present channel capacity is insufficient to accommodate demonstrated additional needs.

The Arizona Board of Regents for Arizona State University (ASU) presently has licenses to operate an ITFS system utilizing twelve channels in the Phoenix, Arizona, area. These channels were authorized before the existing high demand for ITFS channels when waivers of the four-channel rule were often granted. ASU now has requests on file for twelve additional channels. A petition to deny the waiver request has been filed by the Microband Corporation of America which alleges, in part, that the ASU system cound be more efficiently engineered so that the University cound accomplish its goals without additional channels. This would leave these channels for other ITFS users. In addition, some of the requests for channels are mutually exclusive with those of other applicants. The Commission is presently considering selection procedures and criteria for choosing among mutually exclusive applicants. Matters such as whether, and if so, to what extent, the local or nonlocal nature of applicants and requests for more than four channels by applicants should be factored into the comparative criteria, are under consideration.

15-MILE PROTECTED SERVICE AREA

3. The following responds to Senator Inouye's question relating to 15-mile protected service area for ITFS licensees:

In the Further Notice of Proposed Rulemaking in MM Docket No. 83–523, 49 Fed. Reg. 32610 (August 15, 1984), the Commission proposed to adopt the same protected service area standard as was adopted for the Multipoint Distribution Service (MDS). Generally, this would amount to a protected service area boundary, i.e., and area where sites receiving the signal would be protected from interference, of 15 miles from the ITFS transmitter site. Added receive sites within this area would be protected from interference without the need for an application after an initial authorization. Recognizing the need for protection to receive sites outside this boundary, the Commission proposed to protect such sites from cochannel and adjacent channel interference provided that the power flux density of the transmitted signal is above -75.6 dBW/m^2. Comments were solicited on the appropriateness of these standards for ITFS.

Numerous comments were received regarding this matter. A Report and Order concluding the ITFS rulemaking proceeding is expected to be considered by the Commission in the third quarter of this fiscal year.

REVENUES OBTAINED THROUGH LEASING

4. The following responds to Senator Goldwater's question regarding the use of revenues obtained through leasing:

The Commission presently has no requirement and has not proposed a requirement that revenues obtained through the leasing of ITFS excess channel capacity be funneled back into the instructional television facility being leased. We recognize that many ITFS licensees may have a variety of educational and administrative demands on their resources, but we are optimistic that revenues generated in this manner will be used to enhance the system. There is, however, no current information documenting that practice. The Commission is interested in the uses to which leasing revenues will be put and will take whatever action may be considered appropriate if faced with evidence of abuse of these leasing privilege.

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

CHADBOURNE, PARKE, WHITESIDE & WOLFF,
Washington, DC, March 29, 1985.

Hon. BARRY GOLDWATER,
U.S. Senate, Chairman, Commerce Communications Subcommittee, Washington, DC.

DEAR SENATOR GOLDWATER: Chadbourne, Parke, Whiteside & Wolff represents a number of clients interested in establishing communications satellite networks employing a large number of small diameter earth stations. These clients are acutely concerned about proposed legislation which would impose an FCC application fee. We submit this letter in response to your invitation to file comments on this subject.

In particular, we are extremely concerned about one aspect of the proposed fee schedule. This is the $1,350 application fee for each transmit earth station in the communications satellite service. Evidently this fee, which was developed several years ago, was based on estimates of 500 such authorizations being issued annually. The Commission could now reasonably expect to process thousands of these earth stations each year.

We believe that the fee will have a devastating impact on a user's ability to implement an integrated communications network employing small diameter earth stations. These networks will utilize hundreds or thousands of 4 ft. and 6 ft. transmit/receive earth stations. Each station will cost $10,000 to $15,00 each, or perhaps even less. In contrast, the previous generation of transmit/receive earth stations was much more expensive, in the $200,000 to $500,000 range each. These networks will enable a company to integrate its communications requirements so that it may operate in a more efficient manner.

A recurring fee of $1,350 for each individual earth station will have a severe impact on the users' ability to employ this technology. For example, on March 13, 1985, Wal-Mart Stores, Inc. applied for authority to construct and operate up to 2,000 fixed satellite earth stations which would be located at retail outlets, warehouses and other corporate facilities. If the legislation had been enacted prior to its filling the application, Wal-Mart would have been charged a fee of $2,700,000. This is more than an incidental cost. If the legislation is enacted in the future, Wal-Mart may still be assessed a large fee, depending on how the legislation is implemented.

The FCC is now seriously considering granting blanket authorization for networks such as that proposed by Wal-Mart. This approach is feasible at the newer Ku-band (11.7-12.2 GHz) but not at the more traditional C-band, because C-band is shared coequally between earth stations and terrestrial fixed microwave, while earth stations are primary at Ku-band.

A single licensing fee to cover a "system authorization" would ease the economic burden on licensees and properly account for the workload burden on the FCC staff. This is because, under the system authorization approach, the FCC staff will spend no more time on a network of thousands than on a single earth station application.

In light of these circumstances, we believe that the FCC application fee for 12/14 GHz transmit/receive earth stations should be modified to allow for a one-tome only cost for system proposals such as proposed by Wal-Mart.

Respectfully submitted,

VERONICA M. AHERN.

FOREST INDUSTRIES TELECOMMUNICATIONS,
Eugene, OR, March 29, 1985.

Hon. BARRY GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science, and Transporatation, U.S. Senate, Washington, DC.

DEAR SENATOR GOLDWATER: This letter is to place on record with the Subcommittee on Communications views of Forest Industries Telecommunications (FIT) with regard to a draft bill proposed by the Federal Communications Commission (FCC) that would authorize the latter to assess administrative fees to applicants. We appreciate that you have kept the record of the March 20th hearing of the Subcommittee open in order to receive comments from the interested public.

FIT is the national organization of radio users licensed in the Forest Products Radio Service. For thirty-seven years, FIT has been recognized by the FCC as the frequency coordinating committee for the Forest Products Radio Service. Members of FIT range from large corporations doing business on a national level to individual loggers engaged in local activity only. There are on the order of 1700 members of FIT.

FIT is interested in both legislative and FCC Regulatory actions that can impact on land mobile radio communications interests. The forest industries depend upon land mobile radio for safety on life and property, forest fire detection and suppression, and for the efficient operation of forest activities, e.g., timber planting, growing, harvesting, and manufacturing. It must be emphasized that land mobile communications in the forest industries are used for safety and as an added operational tool in the conduct of logging activities. Users in the Forest Products Radio Service are not in the business of communications and therefore do not use their radios as a source of income as do broadcasters of common carriers. Because logging activities are usally in remote and mountainous areas, radio communications are an essential adjunct to the conduct of those activities. There are very few telephones lines, if any at all, in most areas of logging activity.

The fee schedule appended to Chairman Fowler's letter of March 4, 1985 to the Chairman of the Senate Committee on Commerce, Science, and Transportation has been reviewed. FITs' interest is in those proposed fees applicable to private land mobile radio licenses and in Section 8(b)(1) associating the level of fees to be charged with the Consumer Price Index (CPI) based on bi-annual reviews.

While FIT would prefer, of course, that there be no fees, the objective of recovering administrative costs of processing license applications is understood. The fees proposed for private land mobile licenses are considered reasonable and, assuming they are reflective of the administrative costs involved in the licensing process, FIT would interpose no objection. FIT's great concern is that what is now described as an administrative fee does not evolve over time into a spectrum user charge. If the Commission's fee proposal does become enacted, it should be with a clear understanding spelled out in the Report accompanying the legislation that fees are administrative in nature, designed to recover costs of the FCC licensing process and are not intended to be or to become a spectrum usage fee that could be related to rule by "marketplace" rather than the long standing public interest convenience and necessity concept that has served the United States so well.

In the view of FIT, that part of Section 8(b)(1) of the FCC proposal referring to the CPI should be dropped, as it misconstrues the purpose of administrative fees. The purpose of fees is to recover the cost of processing license applications, thereby relieving the tax paying public of this burden. The CPI is irrelevant because administrative costs would be affected more by such things as data processing techniques, greater use of private frequency coordinators, automation, and demand for licenses. Thus, while a review every two years is supported, the fees should be based on actual costs and not on variations of the unrelated CPI.

Although not included in Chairman Fowler's letter of March 4th referenced above, it is understood, nevertheless, that use of "auctions" came up during the hearing on March 20th. The Subcommittee is urged not to adopt the use of auctions as an option for spectrum management. The use of auctions is seen as a default of the Commission's responsibility to allocate spectrum on the basis of the public interest, convenience, and necessity. The American public has built up a huge radio communications capability relying on spectrum allocations made over the years by the FCC under the public interest standards of the Communications Act of 1934 (As Amended). It would be a significant disservice to radio users if, in the future, access to the spectrum depended upon the highest bidder. The present system of allocating and assigning radio frequencies has provided stability and confidence that users could continue to plan in using frequencies as long as their operations meet the public interest test. Replacement of the present system of spectrum management with auctions, or with other "market" mechanisms could have dire consequencies as the public interest test that would be replaced with bidding, buying, and selling of a vital public resource that once gone would be even more costly to recover. In short, the Subcommittee is urged not to give consideration to the use of auctions as an option in the spectrum management process.

Thank you for inviting the public to comment. The members of FIT depend heavily upon their radio communications systems and welcomed your invitation to make their views know.

Very sincerely yours,

JAMES H. BAKER,
Executive Vice President.

ASSOCIATION OF AMERICAN RAILROADS,
Washington, DC, March 29, 1985.

Hon. BARRY GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science & Transportation, U.S. Senate, Washington, DC.

DEAR SENATOR GOLDWATER: The purpose of this letter is to respond to your invitation at the March 20th hearing of the Subcommittee for the public to file comments on a Federal Communications Commission (FCC) proposal to assess administrative fees for the licensing services it provides to applicants. Since the subject of "auctioning" is understood to have come up at the March 20th hearing, the response below addresses that matter as well.

The interest of the Association of American Railroads (AAR) in the proposed administrative fees pertains to those charges applicable to private operational-fixed microwave stations and private land mobile radio licenses. While the AAR would prefer there be no fees, there is no objection to the fee proposal put forth by the Commission in the attachment to Chairman Fowler's letter of March 4, 1985 to the Chairman of the Senate Committee on Commerce, Science, and Transportation. If there are to be fees, those proposed by the Commission as regards the services of interest to AAR are considered reasonable.

It is most important, in the view of AAR, that the proposed fee schedule, if adopted, not be permitted to devolve into a spectrum fee or to become a "veiled" spectrum fee. As long as the purpose of the fees is to recover reasonable administrative costs and thereby reduce the burden on the tax paying public, the proposed fee concept can be accepted. This view is expressed because there are advocates supporting the assessment of fees for use of the spectrum or even the outright buying and selling of frequencies. To such advocates the current FCC fee proposal would be looked upon as an interim step to either assessing spectrum fees or the buying and selling of frequencies. The AAR would recommend, if the Subcommittee decides to go forward with the FCC fee proposal, that the accompanying legislative history make abundantly clear that its action is not intended to be nor should it be interpreted as an endorsement of a concept for spectrum fees or the buying and selling of radio frequencies as though they were a privately held property.

Section 8(b)(1) of the FCC proposal relates changes in the Consumer Price Index (CPI) as the basis for increases or decreases in administrative fees. AAR suggests that reference to the CPI misses the point of an administrative fee schedule which is intended to recover administrative costs of the FCC in processing applications for licenses to operate certain radio systems. Thus while a proposed review every two years of fees charged is appropriate, increases or decreases should be determined by what it costs the FCC to do the processing and not what the CPI does. Factors such as data processing techniques, equipment automation, or use of industry coordinators to do much of the work could affect administrative costs and reflect more accurately the appropriateness of a fee increase or decrease.

Proceeding now to the subject of "auctioning" which apparently was addressed in the course of the March 20th hearing, the Subcommittee is urged not to initiate legislation authorizing the use of auctions by the Commission as a tool for the spectrum management process. The radio frequency spectrum is a unique public resource that the Commission should be not permitted to turnover to the "marketplace" by auctioning frequencies or blocks of frequencies to the highest bidders. Management of the radio frequency spectrum involves many technical parameters that cannot in the public interest be resolved by the simplistic means of an auction. Propagation characteristics of different orders or frequencies, power, bandwidths, and transmitter environments are examples of variables that preclude "packaging" a frequency and selling it by auction. Furthermore, the public's interest in radio in many cases, particularly when safety aspects are involved, is such that financial resources should not be the determining factor as to who gets to use the spectrum. Industries such as railroads, shipping, and aviation use radio as an essential part of their operations for the safety of the American public and should not be required to "bid" for frequencies.

AAR's concern in commenting on both the fee and auctioning concepts is to assure that spectrum remains available to fulfill the radio communications requirements of the nation's railroads. The communications systems of the railroads, like all other users, have been built up over many years based on licenses granted by the FCC permitting use of individual frequencies in the public interest. AAR believes that replacement of the present system of spectrum allocation with auctions or with other "market" mechanisms will cause great disruptions, if not havoc, to the private industries depending upon radio communications for safe and efficient operations. Railroads alone have invested in excess of $300 million in land mobile communications. The present spectrum system provides the degree of stability needed, that is, reasonable assurances that the radio spectrum will continue to be available to allow continued future operation of those systems.

In short, the AAR urges legislation that would not permit the FCC to scrap existing spectrum allocations and substitute the use of auctions of spectrum to the highest bidder or to charge fees unrelated to administrative costs.

Thank you for providing an opportunity to comment on behalf of the Railroad Industry on the foregoing two important matters.

Sincerely,

W. H. Dempsey, *President.*

Community Antenna Television Association,
Fairfax, VA, March 29, 1985.

Senator Barry Goldwater,
U.S. Senate,
Washington, DC.

Dear Senator Goldwater: The Senate Communications Subcommittee of the Commerce, Science & Transportation Committee is in the process of reviewing the fee schedule proposed by the Federal Communications Commission which was recently submitted to you. That fee schedule is intended to allocate charges for the "services" rendered by the agency.

The Community Antenna Television Association (CATA) which represents many of the nation's smaller independent cable television operators would like to highlight here a significant objection we have to one of the proposals just recently added to the suggested FCC fee schedule.

The Commission recently submitted an amended fee schedule which would directly affect the smaller, rural cable operators throughout the United States. The Commission suggests imposing a fee of $700.00 for the filing of cable television special relief petitions. This would be the highest fee imposed on cable operators under the schedule. There is a very basic problem with the proposal. It would impose fees where they can least be afforded.

There are only two areas in the cable television rules of the FCC where special relief petitions are filed. Those are for systems seeking relief from having to carry an additional (new) so-called "must carry" signal, or for systems seeking relief from the Commission's "nonduplication protection" rules. In both instances the most common reason for seeking such relief is that the rules impose an economic hardship on a smaller system—usually one with limited channel capacity, which cannot afford at the present time to comply with the rules.

The imposition of a $700.00 fee to file an "economic hardship" waiver petition is, in itself, an economic hardship! We respectfully request that you seek information from the Commission on the method and logic of their decision to suggest such an imposition, and that you oppose it as an unwarranted penalty on smaller cable operators nationwide.

Respectfully submitted,

Stephen R. Effros, *Executive Director.*

Satellite Business Systems,
McLean, VA, March 29, 1983.

Hon. Barry Goldwater,
Chairman, Senate Subcommittee on Communications,
227 Senate Hart Office Building, Washington, DC.

Dear Senator Goldwater: I write on behalf of Satellite Business Systems to provide comment for the record of your hearings on the authorization for the Federal Communications Commission, and specifically with regard to the proposed licensing fees offered by the FCC in conjunction with its authorization request. SBS is a partnership of IBM and Aetna Casualty and Life, which provides voice, data and video communications services through our network of four orbiting satellites, 115 earth stations and other terrestrial facilities. Our plans for expansion anticipate several new data and educational services as well as bulk transponder leases which will make extensive use of Ku-band earth stations.

Because of the features of the Ku-band, transmit and receive earth stations will be widely available in the marketplace for as little as $5,000. The economics of these shall earth stations promise the introduction of an exciting new array of communications services that will enhance business efficiency and effectiveness, as well as provide new educational and residential service offerings.

The proposed FCC processing fee schedule recommends a licensing application fee of $1,350 per transmit/receive earth station, and a $650 fee for receive only stations. In both cases the licensing fee is such a significant proportion of the purchase price of the station that the licensing process itself will serve as a barrier to the full utilization of this new generation of small earth stations.

We ask that your Subcommittee review these fees and consider requiring a reduced and one-time only application fee for a particular system of earth station. Any follow-on applications for that system which are identical to the original submission should be processed without charge, since no administrative effort is required, particularly in the Ku-band where frequency coordination is not an issue.

May I further point out that the proposed FCC fee schedule for satellite space stations contains separate fees for activities which are presently combined under FCC procedures. The FCC now permits a combined filing for satellite construction, launch and operation. In contrast, the proposed fee schedule lists an $1,800 application fee for satellite construction and a separate $18,000 fee for launch and operation authority. Where these applications are submitted and reviewed jointly, it would be reasonable for the single and substantial $18,000 fee to suffice for the combined submission.

We appreciate the opportunity to offer these comments and would be pleased to provide any further information which might assist your deliberations.

Sincerely,

W.D. ENGLISH, *Vice President.*

STATEMENT OF EDWARD O. FRITTS, PRESIDENT, NATIONAL ASSOCIATION OF BROADCASTERS

My name is Edward O. Fritts. I am president of the National Association of Broadcasters. The National Association of Broadcasters is a trade association representing more than 4,500 radio and 800 television stations around the country, including all the major radio and television networks. I appreciate this opportunity to comment upon the schedule of so-called "cost of regulation" fees proposed by the Federal Communications Commission that are contained in the "Federal Communications Commission Authorization Act of 1985."

The National Association of Broadcasters has long opposed any system of Federal fees imposed on broadcast licensees. As businesses, broadcasters already pay substantial taxes to the federal government and would oppose any additional levies based on the frequencies assigned to broadcast licensees.

A REALISTIC BASIS FOR COST OF REGULATION FEES

If Congress intends to enact a system of fees designed to defray the cost of regulatory services provided by the FCC to licensees, it is necessary that the fees actually reflect the costs of the services that are provided. The services in question are primarily license applications and renewal processing costs. However, the proposed fee schedule does not appear to reflect any analysis by the Commission of the true costs of the regulatory services involved. The proposed fees do not reflect the significant reductions in regulatory costs that have attended the Commission's deregulation proceedings during the last several years. Despite the Commission's claim that the proposed fees accurately reflect the cost of providing regulatory services to the industries that fall under its jurisdiction, it is clear that the fees greatly exceed the costs of the corresponding services.

FEES SHOULD REFLECT COST REDUCTIONS RESULTING FROM DEREGULATION

The proposed fee schedule is virtually identical to the schedule contained in S. 55 that passed the Senate early in the 98th Congress and only slightly different from the fees contained in S. 821, a Senate FCC authorization bill considered in the 97th

Congress. The fee schedules contained in S. 821 and S. 55 were proposed prior to the FCC's radio deregulation (in the case of S. 821) and television deregulation proceedings and the postcard license renewal and license term extensions that eliminated a substantial number of broadcast regulations. Those deregulatory proceedings reduced the extent of and, presumably, the cost of regulation of broadcast licensees. However, the FCC's new proposal fails to reflect those substantially reduced regulatory costs. Moreover, the dramatic gains in the efficiency with which the Commission operates that have occurred in recent years, which would presumably also lower the cost of regulatory services, are not reflected in the Commission's proposal.

In evaluating the Commission's proposed cost-of-regulation fees, it is important to remember that the concept of an agency recouping a portion of the cost of regulation from a regulated industry is not new. That concept forms the basis of the Independent Offices Appropriations Act of 1952 ("IOAA") and was used by the Federal Communications Commission to assess what it claimed were cost of regulation fees against broadcast licensees from 1970 to 1976.

However, the Commission's fee schedules were rejected by the United States Court of Appeals in 1976. The Court found that the fees collected by the Commission exceeded the cost of providing the services in question and directed the Commission to refund to licensees approximately $32 million of the nearly $48 million it collected during the period August 1, 1970 through December 31, 1976. The attached booklet issued by the FCC entitled, "FCC Fee Refund Program," details the portion of the fees paid by licensees that were found to exceed the true cost of providing the regulatory service in question and were later refunded to licensees.

THERE IS NO BASIS FOR AN ANNUAL FEE

The Commission's own statistics demonstrate that the annual fee it collected in the early 1970's greatly exceeded the costs upon which it was based. The Commission based its earlier annual fee on an "annualization" of the then-triennial license renewal process for broadcasters. It estimated that the actual annualized cost of the renewal process was $155.00 for all broadcast services, radio and television, and for all market sizes, rather than the $7,500 fee it collected from television stations in the largest markets.

Since that time, television licenses have been extended from three to five years and radio licenses from five to seven years. The Commission has also instituted a postcard renewal system—significantly reducing paper work for both the Commission and broadcasters—for all commercial radio stations and 95% of commercial television stations. However, instead of a substantially lower fee reflecting reduced regulatory costs, the Commission has increased the top proposed annual fee rate from $7,500 to $9,000. This fee is clearly unsupported by the true cost of the renewal service.

The Commission's fee refund program also sheds light on its current proposed "application" and "grant" fees for construction permits and fees for assignments of license and transfers of control. As one example, the Commission found that its costs for processing the application for a VHF television station located in one of the top 50 markets totaled only $1,740.00, but it has collected from all applicants a $5,000.00 application fee and a $45,000.00 grant fee from successful applicants. Approximately $48,260.00, or 96%, had to be refunded as exceeding the cost of processing the applications.

The Commission currently proposes for the same VHF application a $1,200.00 application fee and a grant fee of three times the annual fee. The proposed annual fee is $9,000.00 for the top 20 markets, which would constitute a $27,000,000 grant fee for a VHF station in those markets. These charges, like those the Commission refunded nearly ten years ago, greatly exceed the cost of processing applications.

Fees should not be assessed against licenses, assignees or transferees of existing facilities placed into a hearing pursuant to a petition to deny or a competing renewal application. These hearing costs relating to proceeding involving existing facilities concern the service of an "independent public interest," and should be excluded from the cost basis for FCC fees. NAB would favor language barring collection of fees for such a general public interest purpose.

Broadcasters should not have to bear the costs of other Commission activities which benefit the public and the public interest generally. The costs of these regulatory efforts should be borne by the public, the primary recipient of any benefit which might flow from such public interest activities (e.g., spectrum management, enforcement of FCC rules and regulations, general research and policy planning.)

In establishing any fee schedule it is important for the Congress and the Commission to recognize that broadcast stations comprise only a small percentage of the

Commission's total number of licensees. The total number of license authorizations now outstanding approaches a staggering 20 million. Because only 10,000 of that number are broadcast licenses, we wish to emphasize our plea that broadcasters not be saddled with a disproportionate fee burden.

NAB believes that broadcasters should not be charged fees which would be used for regulation of other broadcast or non-broadcast services. For example, a television or radio licensee should not be assessed a few which is used to defray the costs of processing the thousands of low power television applications now on file.

The current fee proposal contains a provision authorizing the Commission to raise or lower fees in relation to changes in the Consumer Price Index at least every two years. However, the bill also provides that such increases or decreases will not be subject to judicial review. NAB believes that if Congress authorizes the Commission to raise fees, through rulemaking or other means, broadcasters should be afforded the right to request judicial review. This right of court appellate review is essential, especially in light of the unfortunate history of illegally-assessed FCC fees.

As noted, NAB has recommended several fee limits—for example, an exclusion from the "cost" basis of any FCC activity supporting an "independent public interest." More importantly, we believe that the Congress itself, through its oversight and periodic reauthorization process, should ensure efficiency of all the FCC's regulatory efforts, including those to be paid out of taxpayers' pocketbooks, to serve an independent public interest. The Congress must ensure that the FCC regulate only where necessary and that the agency provide adequately for its expenditure of funds appropriated from tax sources as well as from the fees of regulated entities.

Through its radio and television deregulation proceedings, postcard renewal reforms and general gains in regulatory efficiency, the Commission has made great strides in eliminating unnecessary and wasteful regulations that have burdened broadcasters as well as taxpayers. The Congress has added to the cost reductions of recent years by extending the terms of broadcast licenses. These cost reductions make it possible for the Commission to maintain the technical regulations necessary for the operation of the most sophisticated communications system in the world in an era of severe budgetary pressures. Congress should ensure that any schedule of cost-of-regulations fees collected by the Commission accurately reflects the true cost of providing regulatory services to licensees. Such fees will be drastically lower than those proposed by the Commission.

KELLER AND HECKMAN,
Washington, DC, March 29, 1985.

Hon. BARRY GOLDWATER,
Chairman, Senate Subcommittee on Communications,
227 Hart Senate Office Building, Washington, DC.

DEAR SENATOR GOLDWATER: On behalf of our client, Avantek, Inc. ("Avantek"), we are pleased to respond to your invitation requesting Comments on the FCC's fee collection program. Avantek is concerned with one element of the FCC's proposed fee schedule, the initial station authorization charge for satellite transmit earth stations of $1,350. Avantek believes that this fee, if left at the proposed level, would threaten competition, chill the deployment of new technology, and decrease economic productivity.

PRELIMINARY STATEMENT

Avantek, a California corporation, is a vertically-integrated defense and telecommunications company. It specializes in the development of microwave transitors and monolithic integrated circuits, solid-state microwave components, multifunction microwave assemblies, and in supplying complete microwave telecommunication systems and related services.

Worldwide, Avantek serves nearly 5,000 customers in the basic market categories of defense, earth station and satellite communications, cable television, microwave measurements, and terrestrial communications. It offers over 500 standard products operating at frequencies ranging from 1 KHz to over 40 KHz, with galium arsenide field effect transistors (GaAs FETs) operating at even higher frequencies.

COMMENTS

The proposed $1,350 fee does not take into consideration the new satellite networks which are being implemented with frequencies in the Ku band (11.7-12.2 and 14.0-14.5 GHz). These networks would typically consist of hundreds or thousands of new generation transmit/receive earth stations with four or six foot antennas, costing less than $15,000 per station. This is in contrast to earth stations licensed in the more traditional C band which cost hundreds of thousands of dollars each.

We understand from conferences with the Federal Communications Commission staff that new "streamlined" or "blanket" licensing procedures are being considered for systems in the Ku band, primarily because of the large number of terminals involved. Streamlined or blanket procedures may include, for example, filing one master application containing all of the legal and financial information required, and separate applications containing minimal technical information on each earth station terminal. The blanket or master station licensing approach is feasible at the newer Ku band because earth stations are primary in that band, as compared with the more traditional C band which is shared co-equally between earth stations and terrestrial fixed microwave.

If the streamlined or blanket licensing approach is adopted, which we understand is likely, the administrative burden on FCC staff would be reduced because they would be spending no more time processing an application for a network of thousands of new generation earth stations in the Ku band than an application for a single earth station in the more traditional C band. Accordingly, the licensing fee which is supposed to be reflective of the cost incurred by the FCC to process the application, should also be reduced. A single fee to cover a blanket or master authorization would ease the economic burden on licensees.

For the reasons set forth above, we respectfully request that the proposed FCC fee for satellite transmit earth stations be modified to apply only once to a network of Ku band earth stations, rather than once for each earth station in the network.

Very truly yours,

SHIRLEY S. FUJIMOTO,
Counsel.

COLE, RAYWID & BRAVERMAN,
Washington, DC, April 25, 1985.

Hon. BARRY GOLDWATER,
Chairman, Senate Subcommittee on Communications,
227 Hart Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: We are writing to supplement the record of the hearing held before the Subcommittee on Communications on March 20, 1985 regarding the Federal Communications Commission Authorization Act of 1985. Our firm represents more than 100 cable television companies serving communities throughout the United States. We appreciate very much this opportunity to comment on the proposed schedule of regulatory fees applicable to the cable television industry.

The FCC proposal includes a number of substantial fees for the cable television industry.[1] While we believe that many of these fees are high, we are particularly concerned about the proposed fee of $700 for cable television special relief petitions. In view of the purpose of such petitions and the extraordinary amount of the proposed fee, we respectfully request that the subcommittee delete this $700 fee from the schedule proposed in the FCC authorization legislation.

Special relief petitions provide the only means by which waivers of the Commission's general regualtions can be obtained by cable operators and other affected parties. In many cases, the application of general regulations to particular fact situations is entirely inappropriate and does not serve the public interest. Thus, the special relief process has been used to permit the Commission's regulatory scheme to function in a somewhat reasonable manner.

Special relief petitions by cable operators are often filed to avoid technical problems and imposition of undue economic hardship on the cable system. Many of these petitions are filed by very small cable systems in need of relief because they cannot afford the cost of compliance with a particular FCC regulation. We believe it is inappropriate to impose such a substantial filing fee when a major purpose of the special relief process is to prevent economic hardship.

Imposition of such a substantial fee for cable special relief petitions discriminates against cable operators. Virtually all other fees in the FCC's proposed fee schedule are for applications and FCC authorizations which confer a valuable right to use of the radio spectrum upon the broadcaster, common carrier or other applicant. On the other hand, cable special relief petitions are filed generally for the purpose of obtaining relief from a government-imposed regulation which would otherwise be applicable to the cable operator.

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[1] See Attachment which lists proposed fees applicable to the cable television industry.

Furthermore, similar special relief procedures are available in every other service to enable broadcasters, common carriers, and all others licensed by the Commission to obtain relief from regulatory requirements where necessary. Yet the Commission proposes to impose a very substantial fee *only* upon cable television special relief petitions. The Commission offers no justification for such discriminatory treatment.

Apparently, certain broadcast interests have advocated higher FCC fees for the cable television industry and the $700 fee for cable special relief petitions may be the result of that pressure. But such an approach ignores the basic difference between broadcast and cable regulation. Licensing and some limited regulation of broadcasters is of benefit to that industry which receives a government grant of valuable frequency spectrum. On the other hand, cable television regulation has historically been used to restrict cable development for the benefit of broadcasters. Unlike other regulated industries, the cable industry has never benefitted from Commission regulation and should not be required to bear the cost for regulation of broadcast or other non-cable communication services.

Furthermore, we do not believe that the $700 filing fee proposed for special relief petitions bears any realistic relation to the Commission's costs in processing such petitions. While some petitions may be complicated, many are only one or two pages in length and are often submitted in letter form. Many of the petitions are routine and are routinely disposed of by the Commission.

The right to petition the government for redress of grievances is one of our most fundamental liberties protected by the First Amendment to the Constitution. This should be particularly true when the grievance from which redress is sought is a government-imposed regulation. Moreover, a reasonable waiver procedure is a prerequisite to establishing and maintaining the legality of government regulations.

We urge the Subcommittee to delete the proposed fee for cable television special relief petitions from the FCC's authorization legislation. To single out such a fee for cable television is not only discriminatory and constitutionally questionable but is not in the public interest.

Respectfully submitted,

ROBERT L. JAMES.
LINDA M. WELLSTEIN.

Enclosure.

ATTACHMENT

PROPOSED FCC FEE SCHEDULE—FEDERAL COMMUNICATIONS COMMISSION AUTHORIZATION ACT OF 1985

The following proposed fees could be applicable to the cable television industry:

Service	*Cost*
1. Cable TV relay service construction permits, assignment and transfers, renewals and modifications	$135
2. Satellite receive—only earth stations—initial station authorization	200
All other applications	90
3. Transmit earth stations—initial station authorization	1,350
All other applications	90
4. Registration Statement	25
5. Cable television special relief petitions	700

M/A-COM, INC.,
Rockville, MD, March 27, 1985.

Hon. BARRY GOLDWATER,
Chairman, Senate Communications Subcommittee,
227 Hart Senate Office Building, Washington, DC.

DEAR SENATOR GOLDWATER: M/A-COM, Inc., a manufacturer of telecommunications equipment and systems, respectfully submits this letter in response to your invitation to file comments on FCC licensing fees.

We are concerned with one limited aspect of the proposed free schedule, but our concern on this subject is extremely intense. The FCC has proposed to charge $1,350 per transmit/receive earth station as a licensing fee. We believe that this fee could stifle the development of important new technology and destroy a newly-emerging market.

The proposed fee ignores radical changes in technology and network design that have evolved in the last two years. These changes are based on the use of new satellite systems with frequencies in the Ku-band. These satellites can support much smaller, lower cost earth stations than with earlier generations.

The new technology is characterized by networks of hundreds or thousands of 4 ft. and 6 ft. transmit/receive earth stations. These stations will cost $10,000 to $15,000 each, or perhaps even less. In contrast, the previous generation of transmit/receive earth stations were much more expensive, in the $200,000-$500,000 range each.

As an example of this new network design, one company, Wal-Mart, has just filed an application at the FCC for up to 2,000 small earth stations. Other companies with similar transaction or point-of-sale data communications needs are considering similar networks. Federal Express has given consideration to a network of 20,000 or more earth stations for document transfer.

For these large networks of identical small earth stations, the FCC staff does not want to have to deal with thousands of individual licenses for these earth stations, and is moving toward a "blanket authorization" approach. This approach is feasible at the newer Ku-band (11.7-12.2 GHz) but not at the more traditional C-band because C-band is shared co-equally between earth stations and terrestrial fixed microwave, while earth stations are primary at Ku-band.

A single licensing fee to cover a "blanket authorization" would ease the economic burden on licensees and properly account for the workload burden on the FCC staff. This is because the FCC staff will spend no more time on a network of thousands than on a single earth station application.

Consequently, for these reasons, we specifically request that the FCC fee for a transmit/receive earth station be modified to apply only one time to a network of Ku-band earth stations, rather than one time for each earth station in the network.

Respectfully submitted,

JEFFREY A. KRAUSS, *Vice President.*

NATIONAL RADIO BROADCASTERS ASSOCIATION,
Washington, DC, April 12, 1985.

Hon. BARRY GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science and Transportation, U.S. Senate, 227 Hart Building, Washington, DC.

DEAR MR. CHAIRMAN: The National Radio Broadcasters Association has carefully reviewed the proposal by the Federal Communications Commission to establish, by statute, as part of the agency's authorization bill for FY 1986, a schedule of fees on those licensed by the Commission in order to help defray the costs of regulation.

NRBA is opposed to enactment of any such fees. In reaching this conclusion, NRBA is guided by the following considerations:

(1) A new fee on radio broadcasters is indistinguishable from a new tax on our industry. Radio broadcasters are of course subject to the full panoply of tax laws, and we bear substantial costs associated with compliance with existing Commission regulations and procedures. It is unfair to single out one sector of American business to pay additional fees assessed by the Government. Radio broadcasters should not be singularly treated on a piecemeal basis to generate additional revenues for the Government. A new schedule of Commission fees would constitute an additional tax over and above existing law and any other changes in the tax law Congress might enact in the future which, it should be noted, may well increase present taxes paid by business.

(2) Once established in law, such fees could easily be subject to escalation. In the search for additional revenues to help curb budget deficits, any regulatory fees on the books would be an appealing target for ecalation. Again, radio broadcasters should be taxed on an equitable basis with all other businesses, and not assessed a regulatory surcharge that could be arbitrarily raised as fiscal constraints warrant over and above its basic tax liability. We are also acutely aware, as you are, that the power to tax can be the power to control.

(3) If radio broadcasters are to be assessed a regulatory fee, they should get something in return. Previous fee proposals, though not supported by NRBA, have been linked to codificiation of the FCC's decisions to deregulate radio and television. Proposals to impose fees on broadcasters should not be considered in the absence of meaningful reform of the regulatory requirements borne by our industry.

(4) NRBA has, in the past, advocated a comprehensive plan whereby substantial revenues could be generated from the radio industry in exchange for its extensive deregulation. Under this proposal, radio broadcasters would enter into a contract with the U.S. Government for the long term leasing of their licenses, with the contract consideration being specifically capped to prevent arbitrary escalation. Virtu-

ally all regulation, except for technical standards, would be repealed. The funds generated could go into the U.S. Treasury or could be earmarked for specific use, such as for the funding of public radio. Radio licenses would, in effect, become the leased property of the licensees. NRBA firmly believes that competitive, marketplace forces within our industry are more than adequate to warrant deregulation on this scale. If the Subcommittee is to consider any proposal regarding new fees on radio broadcasters, NRBA believes this concept, as an alternative, should receive your attention.

I appreciate the opportunity to convey NRBA's perspective on this matter, and would be pleased to provide any further information you might require.

Sincerely,

BERNARD MANN, *President.*

STATEMENT OF MARYLAND-DISTRICT OF COLUMBIA-DELAWARE BROADCASTERS ASSOCIATION, INC.

The Maryland-District of Columbia-Delaware Broadcasters Association, Inc. (MDCD), by its counsel, hereby respectfully submits for consideration by the Senate Subcommittee on Communications its Comments on the schedule of "cost of regulation" fees proposed in the "Federal Communications Commission Authorization Act of 1985."

MDCD is a trade association representing radio and television stations throughout the States of Maryland, Delaware, the District of Columbia and Northern Virginia. Its membership ranges from the licensees of small radio stations in communities such as Frostburg, Maryland and Bethany Beach, Delaware to the owners of major television stations in Baltimore and Washington, D.C. Whether small or large, radio or television, however, the MDCD members stand united in their opposition to any system of Federal fees imposed on broadcast licensees.

MDCD acknowledges the authority of the Federal Communications Commission, under the Independent Offices Appropriations Act of 1952 (IOAA), to recoup a portion of the cost of regulating the broadcast industry. Indeed, the MDCD membership unpleasantly experienced the exercise of this authority by the Commission in the 1970's. As the distinguished Members of this Subcommittee are well aware, the FCC's assessment of annual regulation fees against broadcast licensees, from 1970 to 1976, was declared illegal by the United States Court of Appeals for the District of Columbia Circuit. *National Association of Broadcasters* v. *FCC*, 554 F.2d 1118 (D.C. Cir. 1976) and *Capital Cities Communications, Inc.* v. *FCC*, 554 F.2d 1135 (D.C. Cir. 1976). The Court found that the Commission, in a zealous attempt to recover its total budget, violated the terms and spirit of the IOAA by levying fees against broadcasters that clearly exceeded the actual cost of regulatory services provided them by the agency. The Commission was directed to refund to broadcast licensees some $55 million of the $90 million collected. This task soon proved Herculean. Describing the "FCC Fee Refund Program", the Commission, in 1978, declared, "[i]t should be evident that this is an extremely complicated program. The Commission is organized to grant licenses—not refunds." In the matter of Fee Refunds and Future FCC Fees, Gen. Docket No. 78-316, FCC 78-695, p. 19 (released October 6, 1978). Indeed, so complicated was the program that many broadcasters, including members of MDCD, never received their full refunds.

Given the uneasy history of fee collection by the FCC, this Subcommittee should most carefully scrutinize the fee system now proposed by the Commission under the 1985 Authorization Act. Once again, MDCD fears, the Commission has, in its zealous effort "to do our part in helping reduce the federal deficit" (Testimony of FCC Chairman Mark S. Fowler, Senate Subcommittee on Communications, March 1985) proposed "cost of regulation" fees that bear little relationship to the regulatory service provided broadcasters. In hearings before this Subcommittee during the 98th Congress on the FCC Authorization Act of 1983, FCC Chairman Fowler proudly recited the Agency's deregulatory accomplishments:

"From Fiscal Year 1981 to Fiscal year 1983:

—We reduced agency paperwork burdens by over 84% from 49.8 million to 8 million burden hours. We were the leader among regulatory agencies in reducing paperwork.

—We improved productivity of granting new and major chnage broadcast applications by 64% and reduced processing time by 42% with 10% fewer employees.

—We reorganized the Broadcast Bureau and Cable Television Bureau into one consolidated Mass Media Bureau eliminating duplication of functions and promoting efficient operations.

—From 1980 to 1983, we reduced agency personnel by over 16% from 2,225 workyears to 1,859 workyears. A leader among federal independent regulatory agencies in reducing personnel."

(S. Hrg. 98-45, March 9, 1983, U.S. G.P.O., Washington, p. 9.) Since 1983, the Commission, under Chairman Fowler's leadership, has made further strides in eliminating costly but unnecessary regulations, with its adoption of "postcard" license renewals, deregulation of commercial television, and lengthening of license terms. Despite these cost-reducing achievements, however, the Commission's now proposed "cost of regulation" fee on broadcasters is only slightly different from the fee schedule that was proposed in 1981 before the 97th Congress (S.821) and is identical to that proposed in 1983 before the 98th Congress S.55). It is clear then that the lower costs of the Commission's regulatory services, as hailed by Commissioner Fowler, are not reflected in the presently proposed fee schedule.

MDCD believes the fee schedule is further flawed by its proposal to assess against broadcasters an annual fee to stay in business. Under the schedule, all industries regulated by the Commission would pay application and processing fees. However, radio and television stations would be alone among those enterprises in being charged an annual assessment. MDCD sees no reason why annual fees to be paid by its membership should, for example, subsidize the Commission's regulation of cellular telephone systems.

With regard to the other specific provisions of the "cost of regulation" fee schedule, MDCD would join in the well-reasoned objections voiced befor this Subcommittee by Edward Fritts, President of the National Association of Broadcasters. As Mr. Fritts stated, "Congress should ensure that any schedule of cost-of-regulation fees collected by the Commission accurately reflects the true cost of providing regulatory services to licensees. Such fees will be drastically lower than those proposed by the Commission."

In sum, MDCD applauds the efforts of the Commission and Congress to achieve efficient and cost-effective regulation of the broadcast industry. MDCD also appreciates the enormity of the federal deficit and the necessity of exploring all avenues that might lead to reduction of this staggering debt. However, ill-considered adoption of a fee schedule that bears little relationship to the cost of regulation would provide as disastrous now as it did in the 1970's. Once again, MDCD has no doubt, the FCC would find itself engaged in the "Refund Business."

FEDERAL EXPRESS CORP.,
Memphis, TN, April 4, 1985.

Hon. BARRY GOLDWATER,
Chairman, Senate Communications Subcommittee,
227 Hart Senate Office Building, Washington, DC.

DEAR SENATOR GOLDWATER: This letter is submitted on behalf of Federal Express Corporation in response to your invitation to interested members of the telecommunications industry to comment on the proposal of the Federal Communications Commission to assess a new system of fees for the processing of licensing applications.

Federal Express will limit its comments to one aspect of the FCC's proposal. Specifically, Federal Express submits that where a "blanket authorization" is sought for a system of numerous identical, small Ku-band earth stations, the applicant should not be assessed, as is currently proposed by the FCC, a $1,350 processing fee for each individual satellite earth station included in the application. Instead, for the reasons set forth herein, Federal Express strongly urges that a single, reasonable fee be assessed for the processing of this type of system or blanket-approval application.

Federal Express's concern with this aspect of the proposal relates to its plan to establish a very broad network of thousands of small earth station antennas to facilitate the expansion of its "ZapMail" document transmission service. The initial phase of our ZapMail service (i.e., electronic transmission of documents between Federal Express "convenience centers," with couriers utilized for pickup from customers and delivery to addressees) has been provided with the support of a nationwide, packet-switched network of terrestrial lines and limited C-band satellite capacity. Recently, Federal Express has begun placing ZapMail equipment directly in customer premises, and is supporting this effort with a packet-switched network, enhanced by the incorporation of several Ku-band earth stations and leased capacity on the GTE Spacenet I space station.

As the number of CapMail customer-premise service locations increases, so will Federal Express's requirement for satellite capacity. To meet this requirement, Federal Express plans to apply to the FCC for a "blanket authorization" to install and operate up to 3,000 small, identical Ku-band earth stations. In addition, Federal Express is currently an applicant for authority to construct and operate its own two-satellite communications system to support ZapMail and other services. The design of this system specifically anticipates use of up to 50,000 identical, small, low-cost Ku-band earth stations to be located at customer premises throughout the United States. As this discussion indicates, Federal Express has a major interest in the portion of the fee proposal relating to satellite earth stations.

Federal Express submits that the assessment of per-station processing fees in the context of an application for a system of small, identical Ku-band earth stations is unjustified, contrary to other FCC goals, and not in the public interest. First, the per-station fee is unjustified, as the time taken to process a Ku-band system application for hundreds or even thousands of identical earth stations is not significantly different from the time taken to process an application for a single earth station, and especially for a C-band station. No coordination with terrestrial stations is required in the Ku-band, which is not shared on a co-equal basis with terrestrial services, as is the C-band. As evidenced by the Common Carrier Bureau's comments in connection with its grant last year of the application of Schlumberger Technology Corporation for a blanket authorization for up to 500 identical transportable Ku-band earth stations (File No. 1462-DSE-P/L-(500)-83), the system application concept is workable and far less time consuming for the Commission; this fact should be reflected in the processing proposal by the inclusion of a reasonable per-system fee.

Second, a per-station fee would be contrary to the FCC's established goal of encouraging the advance of technology, and especially the development of networks of small earth stations, as high processing fees would discourage purchase and use of these small stations. Without a significant market for small stations, there would be little incentive for research and development.

Third, a high per-station fee such as that proposed by the FCC is not in the public interest. The advance of technology has led to a dramatic decrease in the cost of small earth stations. If the proposed per-station fees were assessed, a large percentage increase in the cost to users of small-earth station services would result, as these fees would be passed through. This government-imposed price increase is clearly not in accordance with the public interest.

For these reasons, Federal Express requests that the portion of the FCC's fee proposal relating to satellite earth stations be modified to provide a one-time processing fee for an application for a system of numerous Ku-band earth stations. If we may provide additional information, please do not hesitate to contact me (at 901-762-7706) or our attorney handling this matter in Washington, Howard Shafferman (at 202-822-1212).

Respectfully submitted,

T. ALLAN MCARTOR, *Vice President.*

NATIONAL CABLE TELEVISION ASSOCIATION,
Washington, DC, March 28, 1985.

Hon. John C. Danforth,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: The National Cable Television Association is pleased to respond to the Committee's invitation for comment on the schedule of regulatory fees proposed as a part of the Federal Communications Commission Authorization Act of 1985.

As you know, NCTA is the principal trade association representing cable operators in the United States. Its members operate more than 2100 cable systems nationwide.

The FCC has proposed the following fees which could be applicable to the cable television industry:

Service	*Cost*
1. Cable television relay service—construction permits, renewals, and modifications	$60
2. Satellite receive-only earth stations—initial station authorization	675
All other applications	90
3. Transmit earth stations—initial station authorizations	1,350
All other applications	90
4. Registration statement	25
5. Cable television special relief petitions	700

Documentation of the cost of regulation for these fees and for the others proposed by the FCC has not been made available to NCTA. However, we understand that the Commission has prepared such documentation, and we urge the Committee to review it carefully before enacting these proposed fees into statute.

NCTA is seriously concerned about the proposed fee of $700.00 for cable television special relief petitions. The right to petition the government for redress of grievances is, of course, one of our most fundamental liberties. It is an essential component of the First Amendment to the Constitution.

The Commission receives a variety of petitions for action across the full panoply of communications services under its jurisdiction. These petitions are the mechanism through which parties affected by the FCC's rules may call the Commission's attention to unique fact situations, or seek particular action from the FCC. They are the means through which parties may initiate and participate in the Commission's regulatory processes. These petitions are distinguishable in nature from the application-processing costs associated with the other fees proposed by the Commission.

Among all of the petitions which may be filed before the Commission, cable television, and only cable television, has been singled out for the imposition of a fee. The problem becomes even worse when gauged against a major reason for which such petitions are filed. Typically, petitions for special relief in the cable industry are brought before the Commission when its rules have imposed an undue economic hardship upon a cable operator. The imposition of such a fee merely exacerbates the economic difficulties involved, and could have a significant chilling effect on the legitimate filing of such petitions.

NCTA believes that this discriminatory treatment of cable television is constitutionally questionable and not in the public interest. Accordingly, NCTA urges the Committee to delete the proposed fee for cable television special relief petitions from the FCC's authorization legislation.

Respectfully,

JAMES P. MOONEY, *President*.

RCA COMMUNICATIONS, INC.,
New York, NY, March 29, 1985.

Hon. BARRY M. GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

DEAR CHAIRMAN GOLDWATER: RCA Communications, Inc. respectfully submits this letter in response to your invitation to file comments on FCC licensing fees.

RCA Communications opposes license fees in general and is particularly concerned about the $1,350 fee suggested for each transmit/receive satellite earth station. The basis of our concern is licensing fees that would impede the development of new services, including Ku-band satellite services, which will be offered by the next generation of satellites and are accessible through small, low-cost earth stations.

RCA has been a pioneer in satellite technology. We have been authorized to launch, beginning this fall, Ku-band satellites. These satellites can operate with smaller, lower-cost earth stations than earlier generations of satellites. The successful marketing of this new and importnt Ku-band technology depends upon the installation of networks involving scores, hundreds or even thousands of small, inexpensive four to six-foot transmit/receive antennas at customer premises, such as on the rooftop. These antennas will save consumers the costs of using a common earth station that is often hundreds of miles away and will bring the advantages of satellite technology to a greater number of users.

Unlike earth stations serving earlier generations of C-band satellites, which cost hundreds of thousands of dollars, the new Ku-band earth stations are expected to cost less than $10,000. The proposed licensing fee, however, would add up to 25 percent or more to the costs of these transmit/receive earth stations, which will stifle the growth of this new technology and put it out of the reach of many users, thereby hampering the development of an important market.

In addition, the proposed $1,350 fee appears to be disproportionate to the amount of time the FCC will spend on processing thousands of individual licenses for these earth stations. Unlike C-band earth stations, which use a frequency shared between earth stations and terrestrial microwave, there is no significant interference problem presented by Ku-band trasmit/receive earth stations. Therefore we expect that the FCC will determine whether a prototype Ku-band earth station meets its technical and public interest criteria and then "grandfather" that prototype so that subsequent identical earth stations can be put into operation by a simple notice system. In this case, a $1,350 licensing fee for subsequent terminals of the same design is particularly inappropriate.

For these reasons, if the Subcommittee considers the FCC's proposals, RCA Communications requests that any fee for a transmit/receive earth station be modified to apply only to the first model of a particular Ku-band transmit/receive earth station, rather than one time for each earth station with identical technology.

Respectfully submitted,

EUGENE F. MURPHY, *Chairman.*

STATEMENT OF THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

Mr. Chairman and Members of the Committee, the National Telephone Cooperative Association (NTCA) apppreciates the opportunity to present its views on the Federal Communications Commission's proposed "cost of regulation" fees.

NTCA is a national association comprised of approximately 450 locally owned and operated small telephone system providing service in rural areas in 42 states.

The FCC fee proposal would require that those benefitting from its regulatory services pay for those services. Thus, the FCC established fees for construction applications, licenses applications, equipment registration and the like. Curiously, the FCC also set charges for tariff filings, which do not benefit those filing the tariff, but rather provide the public with information about telephone systems' costs of providing service. Based on this information, the FCC is able to protect the public by ensuring that telephone rates are cost-justified.

The courts allow an administrative agency to impose fees to recover costs incurred which result in a private benefit, but not costs incurred for the public's benefit. The distinction between a public versus a private benefit is therefore crucial for purposes of determining the validity of tariff filing fees. We submit that the filing of tariffs, as required by statute, is solely for the benefit of the public and does not further the financial interests of individual telephone system.

The mere administration of tariff information—which telcos are required by law to file—does not, by itself, confer a benefit to them. Moreover, to attribute a private benefit to any service rendered by the Commission, such as the gathering of cost data, would ignore the litmus test for determining whether fees were allowable—the public, versus private benefit resulting from that service.

For these reasons we urge the Committee to prohibit the FCC from assessing fees for the filing of tariffs by local exchange carriers.

Thank you, Mr. Chairman for considering NTCA's views on the FCC's proposed fee schedule.

STATEMENT OF THE OFFSHORE TELEPHONE CO.

The Offshore Telephone Company ("Offshore"), a wholly owned subsidiary of Litton Industries, Inc., herewith files its Comments in response to the Federal Communications Commission's proposed re-imposition of administrative fees. These comments are filed pursuant to an invitation for public comment by the Honorable Barry Goldwater, United States Senator from the State of Arizona, Chairman of the Communications Sub-Committee of the Senate Commerce Committee.

Offshore is a telephone company which provides communications service to major oil and gas drilling concerns and the 13,000 individuals working seven day shifts on platforms located in the vast regions of the Gulf of Mexico. The Offshore communications network includes numerous rural radio, offshore radio and point-to-point microwave radio stations in addition to many miles of cable. Through this system subscribers located in the Gulf at points south from Pensacola, Florida to Galveston, Texas receive high-quality telephone service. Quality service is crucial in the petroleum rich regions of the Gulf because the tapping of energy reserves vital to the national public interest requires dependable communications. Moreover, at a time when the United States trade deficit reaches unprecedented size, domestic oil concerns in the Gulf play the important ameliorative role of providing energy to Americans from America's natural resources.

All services provided by Offshore would be affected by the administrative fees proposed in S. 55. This legislation would require application fees for construction permits, modifications of construction permits and renewals of licenses in the rural radio, offshore radio and point-to-point microwave radio services. Additionally, S. 55 proposes that applications pursuant to 47 U.S.C. Section 214 to construct domestic cable lines would be charged at a rate of $4 per route mile; and that applications to install or acquire carrier equipment would be charged at a rate of $4 per channel mile. Of particular concern to Offshore is this latter proposal as it affects the carrier's extensive microwave radio network.

To provide microwave radio service Offshore obtains authorizations from the Federal Communications Commission to operate microwave radios. Each microwave hop (generally about 30 miles apart) has up to eight radios each using any of eight different microwave frequencies allocated by the FCC for this specific purpose. Each microwave radio has a capacity of 2,400 channels. By the device of multiplexing or channelization up to 2,400 individual voice and data messages per radio may be transmitted simultaneously over the same path. Thus multiplexing operations astronomically increase the effective "channel miles" of service which a carrier such as Offshore may provide.

I. THE ORIGINAL FEE SCHEDULE AND THE LESSONS OF HISTORY

The world of microwave and the new world of fiber optics transmission paths have a common similarity in that each have vast amounts of spectrum which are totally useless until it is divided into communications sub-channels which are generally capable of either voice or data transmission. In the case of a microwave radio, this division is 2,400 channels, and in the case of the fiber optics pair it is slightly in excess of 8,000 channels. This division of vast spectrum into useable communications channels is called multiplexing. The Federal Communications Commission has always distinguished between a basic microwave construction permit or license authority and the authority to multiplex the radio for channel division. Similar separate authority would appear to be needed to divide or multiplex a fiber optic pair.

When the FCC adopted its previous fee schedule (See former 47 C.F.R. § 1.115(i)) it charged a multiplex fee of $4.50 per 100 equivalent 4 kHz channel miles authorized. A 4 kHz channel is the amount of spectrum used to provide either one voice or one data channel as a result of the multiplex process. The rules as adopted (47 C.F.R. § 1.115(i)) also stated:

7. For applicants who propose to multiplex their radio systems and who make the supplementary showing required by secs. 21.608 and 21.706 of this chapter in the lead application in lieu of filing a separate application under sec. 214 of the act, an additional grant fee will be payable at the rate prescribed in the schedule for sec. 214 applications to extend or supplement facilities.

12. Unless otherwise specified, the grant fees based on channel miles for sec. 214 applications are calculated on the basis of airline mileage between terminal cities (up to a maximum of 2,500 miles between cities). Where domestic satellite channels are to be established between several cities on a demand use basis (as opposed to a point-to-point basis), the grant fee is calculated on the basis of the arithmetic average of the distances between each of the cities so interconnected. Where the channels being established are one-way (rather than two-way), ½ the normal grant fee will apply.

Thus, for common carriers the Commission for years imposed a relatively low application fee followed by an astronomical fee for the multiplexing authority necessary for them to effectively utilize the channels in a manner which met the underlying purpose of establishment of the microwave system in the first place. It is ironic to note that the Commission in applying the low priced microwave application grant fee of $120.00 for the microwave radio station has to have the FCC's staff review extensive engineering material but the astronomical fee for multiplexing the microwave radio into 2,400 channels was generally a one-page informal application. If the 400 miles of microwave service constructed by Offshore (each mile having 2,400 channel duplex capabity) were assessed a fee of $4.00 per mile—as apparently proposed—the FCC fee for the Section 214 authority would exceed $9 million per radio, or several times the cost of the system. Fees assessable at this rate on an 8,000 channel pair fiber optics would be equally great. The Commission ascribed such fees in its interpretation of its old fee rules cited above; and similar fees are laid out in the new proposed Congressional legislation although increased from $4.50 per 100 miles to $4.00 per mile, or almost 100-fold. Therefore, it can only be assumed that were this proposed legislation to pass in the form as written that common carriers would again bear FCC processing fees substantially greater than the cost of constructing and operating their new competitive interexchange carrier systems.

An inscription on the Archives Building reads "What is past is prologue." The intent to impose "fair and equitable" fees is reflected in the beleaguered history of the Federal Commissions Commission's 1970 and 1975 (revised) fee schedules, implemented pursuant to the Legislative mandate of the Independent Offices Appropriations Act of 1952 ("IOAA"). Section after section of the regulations was struck down as unconstitutional by the Federal Courts, beginning with the Supreme Court's seminal decision in *National Cable Television* v. *United States*, 145 U.S. 336 (1974). Particularly relevant to a proper analysis of any new fee proposal, is the instruction of the United States Court of Appeals for the District of Columbia Circuit in *Electronic Industries Association, Etc.* v. *FCC*, 554 F2d 1109 (1976). There the Court outlined several principles which should govern any attempt by the FCC to impose fees if a fee schedule is truly to recoup the "cost of regulation":

> First, the Commission must justify the assessment of a fee by a clear statement of the service or benefit which it is expected to reimburse. Second, it must calculate the cost basis for each fee assessed. . . . Finally, the Commission must set a fee calculated to return this cost basis at a rate which reasonably reflects the cost of the services performed and value conferred upon the payor. Id. at 1117.

After trying unsuccessfully in 1975 to revise its 1970 schedule to withstand judicial scrutiny, the FCC suspended all fee assessments effective January 1, 1977 (FCC 76-1197, 39 RR2 442 (1976)) to begin an internal study of how to meet the Promethean challenge set to it by the Courts. Indeed, S. 55 proposes in Section 7(c), that the Commission shall prescribe appropriate rules and regulations to carry out the provisions of the fee schedule. However, in his remarks before this Subcommittee, FCC Chairman Fowler made clear that guidance from the Congress was imperative to the establishment of valid fee regulations. As shown below, it is Offshore's position that the current draft of S. 55 as it relates to point-to-point microwave and fiber optic service is unfairly burdensome in light of well-reasoned judicial guidelines.

II. THE PROPOSED FEE SCHEDULE

S. 55 would appear to affect point-to-point microwave service in two ways: first by the imposing of a $135 [1] application fee for either a construction permit, a modification of a construction permit or the renewal of a license; second, the bill would impose a $4 per channel mile fee for an application pursuant to 47 U.S.C. § 214 to install or acquire carrier equipment. Prior to 1977, when the FCC's fee schedule was suspended, this latter provision was applied to applicant's who proposed to multiplex their microwave radio systems, 47 CFR § 1.1113 Schedule of Fees for Common Carrier Services at Footnote 7 (see pp. 4-5, supra).

A. The Title 47 U.S.C. § 214 Fee.[2] Clarification of this provision is imperative. Presumably, the provision is meant to apply to multiplexing operations as it did previously; otherwise, the fee would appear to be without meaning.

If the proposed fee were applied to multiplexing operations as before, Offshore questions whether the FCC could show that the $4 per mile fee bears any reasonable relation whatever to the expenses incurred by the Commission on behalf of the payor-carrier. Although IOAA will not control, the lessons of history have modern application. In *National Cable Television Association, Inc.* v. *FCC (NCTA)* 554 F2d 1094 (1976) the United States Court of Appeals for the District of Columbia Circuit taught:

> If a fee is calculated in a proper manner, it should be a reasonable approximation of the attributable costs which the Commission . . . expended to benefit the recipient. A "fee is a payment for a special privilege or service rendered, and not a revenue measure." Id. at 1106.
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> [A] fee, in order not to be tax, cannot be justified by the revenues received or profits, . . . but must be reasonably related to those . . . costs which the agency actually incurs in regulating (servicing) the industry. Id. at 1107.

Assuming the Section 214 provision were applied, it strains reason to think that the $4 per channel mile fee bears any relation to the cost incurred by the Commission in regulating terrestrial microwave services. One consequence of deregulation has been that the Commission's oversight role in the microwave world has substantially diminished. Staff reductions in recent years have left agency division and branch staffs whose main function now is essentially to process applications.

Indeed, the tenuousness of any reasonable nexus between the $4 per channel mile figure, and the actual cost of regulation to the FCC, is dramatically clear if one considers the potential expense of this fee to a carrier such as Offshore, as shown *supra* at page 5.

The detrimental effect of such a fee imposition on so-called "Other Common Carriers" (OCCs) such as Offshore is further highlighted by a recent two year study of the industry by GTE,[3] which shows that prospects for effective competition in the long-distance market are in severe jeopardy. To accomplish assumed growth rates, carriers will have to make enormous capital investments by 1989, while facing very low rates of return. Thus, the prospect of fee impositions combined with the current economic outlook for long-distance carriers works at cross-purposes with the Commission's goals in breaking up the Bell System, since the financial hardship to potential competitors of AT&T Communications will threaten their ability to compete at all. The cost of exhorbitant fees would then be passed on to the individual subscribers, intended by the Government to be the ultimate beneficiaries of deregulation.

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[1] $60 application fee under the FCC proposal.

[2] 47 U.S.C. § 214(a) requires carriers to obtain Commission authorization prior to construction, acquisition, or operation or extension of any line or channel of communication.

B. Construction Permit and License Renewal Application Fees. S. 55 proposes a $135 application fee; Chairman Fowler proposed $60 instead of the higher figure. The Court's guidance in the *NCTA* case, supra, is that this rate should reasonably reflect the cost of services performed by the FCC:

The agency must look not at the value which the regulated party may derive from the regulatory scheme, but at the value of the direct and indirect services which the agency confers. Id. at 1107.

This being the case, since the proposed cost for applications for construction permits (and modifications) as well as license renewal applications is equivalent, the proposal is prima facie suspect: the regulatory burden is significantly higher for processing lengthy construction permits which require substantial technical review than for processing a one page license renewal application. In contrast to the broadcast services (AM, FM, TV), renewals in the public microwave service are more in the nature of pro forma validations of the status quo, rarely contested and requiring almost no review time.

C. "Grandfather" Protection. The established value of the American common carrier communications system used for both interstate and intrastate communications and for local telephonic communications but subject to FCC regulation under Title III of the Communications Act, is in excess of $100 billion dollars. The Commission has never previously applied any fee system retroactively. However, the proposed legislation does not crystallize that it is the intent of the Congress that the Commission should not do so.

Therefore, it is urged that the Congress grant "grandfather" protection to already existing licenses and construction permits, a procedure whose validity has been soundly established in Commission precedent.

III. CONCLUSION

Offshore believes that the fee schedule proposed by S. 55 will actually work to the detriment of companies whose existence the FCC has encouraged by telephone deregulation and consequently to the detriment of the public interest. For this reason the Section 214 provision analyzed herein should be rejected. The proposal to reinstate construction permit and license renewal application fees should be modified to accurately reflect the costs of regulation. Finally "grandfather" protection should be given to already existing licenses and construction permits.

CORPORATION FOR PUBLIC BROADCASTING,
Washington, DC, March 29, 1985.

Hon. BARRY GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science and Transportation, United States Senate, SR-363 Russell Office Building, Washington, D.C. 20510

DEAR CHAIRMAN GOLDWATER: There were conflicting reports last week in the telecommunications trade press concerning the issue of VHF-UHF channel swaps between public television stations and commercial stations. This matter was discussed during the course of the March 20 Senate hearing on the authorization for the Federal Communications Commission (FCC).

The Corporation for Public Broadcasting (CPB) has been following closely the development of the VHF-UHF swap issue. At its last meeting, convened in Tampa, Florida on March 1, 1985, CPB addressed the issue. By coincidence Tampa, as you no doubt are aware, is the site of the proposed swap between the commercial licensee of channel 44, Hubbard Broadcasting, Inc. and Florida West Coast Public Broadcasting, noncommerical licensee of VHF channel. 3.

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[3] "Prospects for Major Facilities—Based Other Common Carriers", released March 18, 1985, prepared for GTE by Booz, Allen & Hamilton, Inc.

Following its deliberations on this issue, CPB adopted a resolution, which cites CPB's obligation to support and encourage a strong public broadcasting system, and urges the FCC to consider fully whether, as the result of an exchange, the public television channels would reach an equivalent audience with a signal of comparable quality. The resolution then concludes by authorizing CPB's management to oppose any modification of FCC procedures governing exchanges, and recommends that, if exchanges are authorized, monies available to public television stations, resulting from such exchanges, be used solely for public broadcasting. A copy of the full text of this resolution is enclosed for your information.

In light of the conflicting press reports and the apparent Congressional interest in this matter, I want to be sure that you are aware that CPB has studied and addressed this issue, and that CPB has taken the position reflected in the enclosed resolution.

CPB will continue to monitor this issue closely with the view of ensuring that the quality of the public broadcasting system is not impaired, and as the situation dictates, keep you advised of any further developments concerning CPB's position.

We thank you for your continuing support of the public broadcasting system.

Sincerely,

EDWARD J. PFISTER, *President.*

GOLDBERG & SPECTOR,
Washington, DC, March 29, 1985.

Hon. BARRY GOLDWATER,
Chairman, Communications Subcommittee, U.S. Senate, Hart Office Building, Room 227, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of Equatorial Communication Services ("Equatorial"), I am writing to supplement the record of the March 20, 1985, hearing held before your Subcommittee. We appreciate your leaving the hearing record open to give us this opportunity to comment.

Equatorial, a common carrier, provides basic and enhanced data services via satellite to customers within the continental United States and Canada, and it has received FCC approval to serve points in Central and South America and the Caribbean. Its principal service offering involves point-to-multipoint networks, in which customer information is coded and transmitted to small, receive-only earth stations, for the most part not more than two feet in diameter, using unique spread spectrum techniques developed by Equatorial. Equatorial also offers a multipoint-to-point spread spectrum service, in which small (four-foot) transmit/receive earth stations are deployed in flexible network configurations.

Equatorial expects this latter, interactive service to grow significantly over the next few years, largely because Equatorial is able to offer its customers a transmitting earth station at an extremely low price. Equatorial has already delivered numerous C-200 transmitting earth stations at approximately $6,000 each.

Because of the low price that Equatorial is charging for these earth stations, Equatorial is very concerned about the FCC proposal to charge a fee of $1,350 for the "initial station authorization" for each "transmit earth station." A fee of this amount would represent approximately a 25% increase in the price of each Equatorial transmitting earth station and would have severe distorting effects on the market for these innovative microterminals.

Implementation of the proposed transmitting earth station fee would be contrary to the policies that the FCC and the Congress have put in place over the last several years. These policies emphasize marketplace solutions over regulation and seek to encourage technological innovation and diversity. If a fee is imposed that is 25% or 50% of the cost of an earth station, a principal benefit of microterminal networks—their low cost—would be lost, thereby sharply reducing the incentives that Equatorial and other companies have both to expand technological frontiers and to reduce further the costs of earth stations.

It seems likely that the FCC did not intend this result when it proposed such high fees for earth stations, and that the Commission's approach to its fee proposal inadvertently did not take account of the changes in satellite earth station technology that have occurred over the past few years. In the recent past, most transmitting earth stations were sixteen feet or more in diameter and cost in the tens (and even hundreds) of thousands of dollars, but the trend today is toward ever-smaller transmitting earth stations at prices substantially under $10,000.

Equatorial is not opposed to the concept of some small fee being imposed for earth stations licenses to compensate the FCC for the costs associated with the licensing process. Such a fee could be tied to the size of the earth station or its price.

An alternative approach would be to charge a relatively high fee for the initial authorization of a type of earth station, with either no fee or a nominal fee charged for licensing of all subsequent earth stations of the same type. This alternative approach would recognize that, once a type of earth station is accepted by the Commission, there are significant economies associated with FCC processing of subsequent license applications.

Equatorial stands ready to work with you and your staff, your counterparts in the House of Representatives, and the FCC in developing an equitable approach to license fees for small earth stations. We are confident that an approach can be found which will meet the FCC's legitimate interest in recovering some of its costs from licensees, while avoiding any distorting effects on the burgeoning market for small earth stations.

Sincerely,

PHILLIP L. SPECTOR.

STATEMENT OF THE TIMES MIRROR MICROWAVE COMMUNICATIONS CO.

The Times Mirror Microwave Communications Company ("TMMCC"), a wholly owned subsidiary of the Times Mirror Company, herewith files its Comments in response to the Federal Communications Commission's proposed re-imposition of administrative fees. These comments are filed pursuant to an invitation for public comment by the Honorable Barry Goldwater, United States Senator from the State or Arizona, Chairman of the Communications Sub-Committee of the Senate Commerce Committee.

TMMCC is the parent corporation of five regional companies [1] which together form a nationwide point-to-point microwave system. (See Attached). TMMCC through its subsidiaries is a major supplier of microwave radio channel capacity to a variety of long-distance interexchange carriers such as MCI, GTE/Sprint, Allnet and U.S. Telephone, among others. The carrier's 3000-plus mile terrestrial microwave network connects hundreds of points between Los Angeles, California and Pittsburgh, Pennsylvania.

TMMCC is a so-called "carrier's carrier", i.e., it leases channel capacity to various interexchange carriers who in turn provide long distance service to individual subscribers.

To provide this service TMMCC's subsidiaries obtain authorizations from the Federal Communications Commission to operate microwave radios. Each microwave hop (generally about 30 miles apart) has up to eight radios each using any of eight different microwave frequencies allocated by the FCC for this specific purpose. Since each microwave radio has a capacity of 2400 channels the TMMCC backbone system transmits 19,200 separate voice or data communications channels. By the device of multiplexing or channelization up to 2400 individual voice and data messages per radio may be transmitted simultaneously over the same path. Thus multiplexing operations astronomically increase the effective "channel miles" of service which a carrier such as TMMCC provides.

I. THE ORIGINAL FEE SCHEDULE AND THE LESSONS OF HISTORY

The world of microwave and the new world of fiber optics transmission paths have a common similarity in that each have vast amounts of spectrum which are totally useless until it is divided into communications sub-channels which are generally capable of either voice or data transmission. In the case of a microwave radio, this division is 2400 channels, and in the case of the fiber optics pair it is slightly in excess of 8,000 channels. This division of vast spectrum into useable communications channels is called multiplexing. The Federal Communications Commission has always distinguished between a basic microwave construction permit or license authority and the authority to multiplex the radio for channel division. Similar separate authority would appear to be needed to divide or multiplex a fiber optic pair.

When the FCC adopted its previous fee schedule (See former 47 C.F.R. § 1.115(i)) it charged a multiplex fee of $4.50 per 100 equivalent 4 kHz channel miles authorized.

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[1] Western States Microwave Transmission Company, West Texas Microwave Company, Central States Microwave Transmission Company, Tower Communication Systems Corporation and Atlantic States Microwave Transmission Company.

A 4 kHz channel is the amount of spectrum used to provide either one voice or one data channel as a result of the multiplex process. The rules as adopted (47 C.F.R. § 1.115(i)) also stated:

7. For applicants who propose to multiplex their radio systems and who make the supplementary showing required by secs. 21.608 and 21.706 of this chapter in the lead application in lieu of filing a separate application under sec. 214 of the act, an additional grant fee will be payable at the rate prescribed in the schedule for sec. 214 applications to extend our supplement facilities.

12. Unless otherwise specified, the grant fees based on channel miles for sec. 214 applications are calculated on the basis of airline mileage between terminal cities (up to a maximum of 2,500 miles between cities). Where domestic satellite channels are to be established between several cities on a demand use basis (as opposed to a point-to-point basis), the grant fee is calculated on the basis of the arithmetic average of the distances between each of the cities so interconnected. Where the channels being established are one-way (rather than two-way), ½ the normal grant fee will apply.

Thus, for common carriers the Commission for years imposed a relatively low application fee followed by an astronomical fee for the multiplexing authority necessary for them to effectively utilize the channels in a manner which met the underlying purpose of establishment of the microwave system in the first place. It is ironic to note that the Commission in applying the low priced microwave application grant fee of $120.00 for the microwave radio station had to have the FCC's staff review extensive engineering material but the astronomical fee for mutliplexing the microwave radio into 2400 channels was generally a one-page informal application. If the 3,000 miles of microwave service constructed by TMMCC in the last three yers (each mile having eight radios of 2400 channel duplex capability) were assessed a fee of $4.00 per mile—as apparently proposed—the FCC fee for the Section 214 authority would exceed $200 million, or three times the cost of the system. Fees assessable at this rate on an 8,000 channel pair fiber optics would be equally great. For example, a $4.00 per mile fee for a 3,000 mile long 8,000 channel fiber optic pair would be $96,000,000.00. The Commission ascribed such fees in its interpretation of its old fee rules cited above; and similar fees are laid out in the new proposed Congressional legislation although increased from $4.50 per 100 miles to $4.00 per mile, or almost 100-fold. Therefore, it can only be assumed that were this proposed legislation to pass in the form as written that common carriers would again bear FCC processing fees substantially greater than the cost of constructing and operating their new competitive interexchange carrier systems.

An inscription on the Archives Building reads "What is past is prologue." The intent to impose "fair and equitable" fees is reflected in the beleaguered history of the Federal Communications Commission's 1970 and 1975 (revised) fee schedules, implemented pursuant to the Legislative mandate of the Independent Offices Appropriations Act of 1952 ("IOAA"). Section after section of the regulations was struck down as unconstitutional by the Federal Courts, beginning with the Supreme Court's seminal decision in *National Cable Television* v. *United States,* 145 U.S. 336 (1974). Particularly relevant to a proper analysis of any new fee proposal, is the instruction of the United States Court of Appeals for the District of Columbia Circuit in *Electronic Industries Association, Etc.* v. *FCC,* 554 F2d 1109 (1976). There the Court outlined several principles which should govern any attempt by the FCC to impose fees if a fee schedule is truly to recoup the "cost of regulation":

First, the Commission must justify the assessment of a fee by a clear statement of the service or benefit which it is expected to reimburse. Second, it must calculate the cost basis for each fee assessed. . . . Finally, the Commission must set a fee calculated to return this cost basis at a rate which reasonably reflects the cost of the services performed and value conferred upon the payor. Id. at 1117.

After trying unsuccessfully in 1975 to revise its 1970 schedule to withstand judicial scrutiny, the FCC suspended all fee assessments effective January 1, 1977 (FCC 76-1197, 39 RR2 442 (1976)) to begin an internal study of how to meet the the Promethean challenge set to it by the Courts. Indeed, S.55 proposes in Section 7(c), that the Commission shall prescribe appropriate rules and regulations to carry out the provisions of the fee schedule. However, in his remarks before this Sub-committee, FCC Chairman Fowler made clear that guidance from the Congress was imperative to the establishment of valid fee regulations. As shown below, it is TMMCC's position that the current draft of S.55 as it relates to point-to-point microwave and fiber optic service is unfairly burdensome in light of well-reasoned judicial guidelines.

II. THE PROPOSED FEE SCHEDULE

S.55 would appear to affect point-to-point microwave service in two ways: first by the imposing of a $135[2] application fee for either a construction permit, a modification of a construction permit or the renewal of a license; second, the bill would impose a $4 per channel mile fee for an application pursuant to 47 USC § 214 to install or acquire carrier equipment. Prior to 1977, when the FCC's fee schedule was suspended, this latter provision was applied to applicant's who proposed to multiplex their microwave radio systems, 47 C.F.R. § 1.1113 Schedule of Fees for Common Carrier Services at Footnote 7 (see pp. 3-4, supra).

A. The Title 47 U.S.C. § 214 Fee.[3] Clarification of this provision is imperative. Presumably, the provision is meant to apply to multiplexing operations as it did previously; otherwise, the fee would appear to be without meaning. But non-dominant carriers such as TMMCC are no longer required[4] to file Section 214 applications, 4th Report and Order, CC Docket 79-252, on the rationale that this could inhibit competitive development of such carriers and result in unnecessary burdens which would inevitably be borne by the public.

But if the fee provision were not applied across the board to all carriers, i.e., both dominant (A.T.&T.) and non-dominant, it would have the same discriminatory effect that formed the predicate for invalidations of the old fee schedule by the Courts during the 1970s. Thus, the provision appears to be inherently inconsistent.

This problem aside, if the proposed fee were applied to multiplexing operations as before, TMMCC questions whether the FCC could show that the $4 per mile fee bears any reasonable relation whatever to the expenses incurred by the Commission on behalf of the payor-carrier. Although IOAA will not control, the lessons of history have modern application. In *National Cable Television Association, Inc.* v. *FCC (NCTA)*, 554 F2d 1094 (1976) the United States Court of Appeals for the District of Columbia Circuit taught:

If a fee is calculted in a proper manner, it should be a reasonable approximation of the attributable costs which the Commission . . . expended to benefit the recipient. A "fee is a payment for a special privilege or service rendered, and not a revenue measure. "Id. at 1106.

[A] fee, in order not to be tax, cannot be justified by the revenues received or profits, . . . but must be reasonably related to those . . . costs which the agency actually incurs in regulating (servicing) the industry. Id. at 1107.

Assuming the Section 214 provision were applied, it strains reason to think that the $4 per channel mile fee bears any relation to the cost incurred by the Commission in regulating terrestrial microwave services. One consequence of deregulation has been that the Commission's oversight role in the microwave world has substantially diminished. Staff reductions is recent years have left agency division and branch staffs whose main function now is essentially to process applications.

Indeed, the tenuousness of any reasonable nexus between the $4 per channel mile figure, and the actual cost of regulation to the FCC, is dramatically clear if one considers the potential expense of this fee to a carrier such as TMMCC, as shown supra at page 4.

The detrimental effect of such a fee imposition on so-called "Other Common Carriers" (OCCs) such as TMMCC is further highlighted by a recent two year study of the industry by GTE, [5] which shows that prospects for effective competition in the long-distance market are in severe jeopardy. To accomplish assumed growth rates, carriers will have to make enormous capital investments by 1989, while facing very low rates of return. Thus, the prospect of fee impositions combined with the current economic outlook for long-distance carriers works at cross-purposes with the Commission's goals in breaking up the Bell System, since the financial hardship to potential competitors of AT&T Communications will threaten their ability to compete at all. The cost of exhorbitant fees would then be passed onto the individual subscribers, intended by the Government to be the ultimate beneficiaries of deregulation.

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[2] $60 application fee under the FCC proposal.

[3] 47 U.S.C. § 214(a) requires carriers to obtain Commission authorization prior to construction, acquisition, or operation or extension of any line or channel of communication.

[4] Indeed the Commission continues to eliminate the circumstances in which such authorization is required. ("It seems that the filing and processing of these applications impose unnecessary costs on consumers, carriers and the Commission," NPRM rel. January 19, 1984 in CC Docket No. 84-28. 96 FCC 2d 623).

[5] "Prospects for Major Facilities—Based Other Common Carriers", released March 18, 1985, prepared for GTE by Booz, Allen & Hamilton, Inc.

B. Construction Permit and License Renewal Application Fees. S. 55 proposes a $135 application fee; Chairman Fowler proposed $60 instead of the higher figure. The Court's guidance in the *NCTA* case, supra, is that this rate should reasonably reflect the cost of services performed by the FCC:

The agency must look not at the value which the regulated party may derive from the regulatory scheme, but at the value of the direct and indirect services which the agency confers. Id. at 1107.

This being the case, since the proposed cost for applications for construction permits (and modifications) as well as license renewal applications is equivalent, the proposal is prima facie suspect: the regulatory burden is significantly higher for processing lengthy construction permits which require substantial technical review than for processing a one page license renewal application.

In contrast to the broadcast services (AM, FM, TV), renewals in the public microwave service are more in the nature of pro forma validations of the status quo, rarely contested and requiring almost no review time.

C. "Grandfather" Protection. The established value of the American common carrier communications system used for both interstate and intrastate communications and for local telephonic communications but subject to FCC regulation under Title III of the Communications Act, is in excess of $100 billion dollars. The Commission has never previously applied any fee system retroactively. However, the proposed legislation does not crystallize that it is the intent of the Congress that the Commission should not do so.

Therefore, it is urged that the Congress grant "grandfather" protection to already existing licenses and construction permits, a procedure whose validity has been soundly established in Commission precedent.

III. CONCLUSION

TMMCC believes that the fee schedule proposed by S. 55 will actually work to the detriment of companies whose existence the FCC has encouraged by telephone deregulation and consequently to the detriment of the public interest.

For this reason the Section 214 provision analyzed herein should be rejected or held not to apply to non-dominant carriers. The proposal to reinstate construction permit and license renewal application fees should be modified to accurately reflect the costs of regulation. Finally "grandfather" protection should be given to already existing licenses and construction permits.

ADDITIONAL QUESTIONS OF SENATOR GOLDWATER AND THE FCC ANSWERS THERETO

Question. It is my understanding that, under the Commission's rules, cable systems can petition for waivers of the must carry requirements, but that such waivers are seldom approved. What would be the Commission's policy on such waiver requests when cable systems are faced with the choice of adding another duplicative local signal or dropping a satellite service or superstation that is otherwise unavailable?

Question. Do you think that there may be some instances where the must carry rules result in instances where the public interest may not be served. When systems are forced to drop satellite services to provide a new local signal that substantially duplicates in its programming those already on the cable system?

Question. Do you think that there may be some instances where the must carry rules result in some irrational situations?

CABLE TELEVISION MUST CARRY RULES

Answer. Each of your three questions raises concerns over the inter-relationship of the Commission's policies of assuring local broadcasters access to the audiences they are licensed to serve and of promoting diversity in the telecommunications marketplace. The Commission's present signal carriage rules strive to meet that objective.

Our objective in adopting the mandatory signal carriage—or "must-carry"—rules was "to assure that 'local' stations are carried on cable television systems and are not denied access to the audience they are licensed to serve. . . ." *Cable Television Report and Order*, 36 FCC 2d 143, 173 (1972). Our rules do not *per se* require a cable system to delete an authorized signal in order to accommodate a signal entitled to mandatory carriage. However, we have consistently held that cable systems may not deny mandatory carriage in favor of discretionary signals. Cable systems lacking the capacity to accommodate all signals entitled to mandatory carriage have several options, including the following: (1) expansion of channel capacity; (2) where appropriate, providing composite carriage; and (3) deletion of a non-mandatory signal. *See, e.g., Cable TV of Marin, Inc.*, 50 RR 2d 1, 9 (1981); *Staunton Video Corp.*, (Staunton, Virginia), 42 FCC 2d 1119 (1973). In some cases, of course, programming may have to be deleted to make room for mandatory signals.

A fourth option, always, is to seek a waiver of our signal carriage rules. However, the burden is on the party seeking an exception to our rules to justify such a request by more than vague, general, or unsupported allegations. This is not an impossible burden to meet. The Commission has granted waivers in the face of showings of poor signal quality (*Wentronics*[1]; *Copper Mountain*[2]; *United Cable—WNNE*[3]), or, in certain circumstances, to preserve a system's last discretionary signal (*Group W/Riverside*), or temporary waivers to allow systems reasonable time to rebuild and expand (*Teleprompter—Santa Cruz*, 91 FCC 2d 146 (1982); *Harron Communications Corp.*, letter of Bureau Chief, March 1985). Indeed, we frequently find, as reflected in our level of dismissal of petitions, that our rules provide an impetus for systems to expand diversity of offerings to their subscribers through channel capacity expansion to accommodate both new local signals and additional existing satellite services.

In addition, a prime concern of ours must be, in pursuing our goals in this area, to ensure that any rules we adopt and enforce are content-neutral, in light of the first amendment. Consequently, we cannot make distinctions among television stations based on the content of their programming. Our signal carriage rules, we feel, are in harmony with these requirements, as they afford all local stations access to their audience, without regard to program content or licensee affiliation.

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[1] Wentronics, Inc. (Casper, Wyoming), 95 FCC 2d 878 (1983).

[2] Copper Mountain Metropolitan District (Copper Mountain, Colorado), Cable TV Actions Report No. 2890, Mimeo No. 4863 (Released June 15, 1984).

[3] United Cable Company of New Hampshire, Inc., CSR-1608 (signed March 18, 1985).

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